Chapter 2C – Working in Highways England Guidance

2.16 Dignity at Work

2.16.1 Guidance Principles

Highways England and its trade unions are committed to the development of an inclusive working environment, in which the differences of individuals are understood, valued and respected. We aim to deliver services that all our customers can access, and we promote behaviour that ensures dignity at work. We seek to recognise and develop individual talent and potential, and will work to create and maintain an environment where bullying, harassment, discrimination and victimisation are not acceptable
Highways England will adopt a zero tolerance approach to any case where it has been established that deliberate bullying, harassment, discrimination or victimisation occurred.

2.16.2 Scope of Guidance

This policy applies to all staff including temporary or contract staff within Highways England and to those working away from the office premises or attending work related social events, which are considered by law as an extension of the workplace.

2.16.3 Guidance Summary

Highways England’s aim is to ensure that all staff are treated fairly and have equality of opportunity to develop their full potential in an environment where each employee's personal dignity is respected.

Highways England will support staff by developing a culture where individuals who feel they are being harassed or bullied can bring forward complaints without fear of ridicule or reprisal.

We are all responsible for our own behaviour and ensuring that we treat each other with dignity and respect therefore contributing to a work environment which is free from bullying and harassment. For issues to be addressed staff must not remain silent when bullying, harassment or victimisation occurs.

It is a requirement for all managers to gain a thorough understanding of equality and diversity issues. They must demonstrate their commitment to the elimination of discrimination, the promotion of equality of opportunity and good relations by:

- leading by example,
- treating everyone with respect and

- dealing with issues appropriately and quickly in a consistent and proportionate manner.

Note that the genuine action of identifying weaknesses in performance does not of itself constitute harassment or bullying, unless the way it is done constitutes bullying, harassment or victimisation. Further information on performance management can be accessed here.

2.16.4 Dignity at Work Guidance

The purpose of this guidance is to:

- Raise awareness of the types of behaviour that can constitute workplace bullying, harassment, discrimination and victimisation.
- Equip individuals with the necessary tools and support to recognise, challenge and eliminate bullying, harassment, victimisation and discrimination.
- Define harassment, bullying, victimisation and discrimination and raise awareness of the associated behaviours.
- Outline responsibilities, including how to recognise inappropriate behaviour.

2.16.5 Your Responsibilities

Whether in the workplace or at work related events, you should not bully, harass, discriminate or victimise colleagues in relation to race, sex, gender reassignment, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership or for any other reason (e.g. working pattern, trade union membership or activity, personal values) Such behaviour will not be tolerated. Individuals will be held personally responsible and liable for their actions, further information can be found in chapter 2A Section 2.12..

Staff who are subjected to bullying and/or harassment can suffer fear, stress and anxiety that can put great strains on their health, work colleagues, personal and family life. Staff can feel vulnerable and are often reluctant to complain as they are concerned about what will happen as a consequence. The impact on individuals, colleagues and the organisation can be detrimental with reduced performance, an increase in absence levels and reputational damage. It is essential that staff or line managers who experience, or witness, inappropriate behaviour do not remain silent as these matters need to be addressed before they escalate.

Any form of inappropriate behaviour will not be tolerated and may result in disciplinary action in accordance with the disciplinary procedures set out in Part A, Chapter 3: Personal Conduct, of the Staff Handbook. Bullying, harassment and/or victimisation can be unlawful and could result in legal

action (for more information please see the section on harassment below). Highways England will assume that all complaints are made in good faith, unless there are clear and strong reasons for believing otherwise. Staff should be aware that making malicious complaints about others is unacceptable and may result in disciplinary action.

2.16.6 Informal Action

It may be that the individual does not appreciate that their behaviour is unacceptable to you and you should make every effort to address the unacceptable behaviour with the individual informally at an early stage where this is appropriate. This will alert them to the fact that you find their behaviour undesirable and give them an opportunity to stop.

In the first instance you should approach the individual(s) concerned and ask them to stop the unacceptable behaviour. They should be told:

- That you find such behaviour or action is unacceptable;
- Why you feel such behaviour or action is unacceptable;
- That you want it to stop immediately;
- If the person being subjected to bullying, harassment or being discriminated against is someone else, you must first obtain their agreement to make the approach on their behalf and then be careful not to cause that person further injury, embarrassment or offence while you are acting on their behalf; and
- Likewise, you must not discriminate against, harass, bully or victimise the person you are challenging.

If the behaviour continues or it is not appropriate to raise the matter directly with the individual(s), you are advised to discuss your complaint informally with your line manager or their line manager. In addition, you may also wish to speak in confidence to a Trade Union Representative and/or an advisor from the Employee Assistance Programme.

If your concerns relate to your line manager you can speak to another line manager or someone of a higher pay band.

It is the aim of Highways England to resolve instances of bullying, harassment and victimisation through informal action, in a timely and confidential manner. If you are not satisfied with the outcome of the informal process you can raise the issue formally through the grievance procedure.

Due to the nature of harassment and bullying, it is sometimes difficult to prove that particular acts have occurred or that in themselves they constitute misconduct. If you believe you are being subjected to harassment or bullying you are advised to keep a diary of events, stating where and when particular acts took place and any specific comments made. You should note whether

there were any witnesses to any event and retain copies of any e mails or other documents which may be relevant. This material should be provided to support any complaint.

Remember that you are expected to comply with reasonable instructions given by your manager and that managers are expected to address poor performance and misconduct – in accordance with laid down procedures – as part of their role. Legitimate action by managers, including reasonable management requests or following the poor performance/ unsatisfactory attendance/ disciplinary procedures, does not represent bullying/ harassment. However, the behaviour of the manager when applying these procedures may amount to bullying, harassment or victimisation

2.16.7 Formal Action

The right to make a formal complaint and have a hearing is enshrined in law. To make a complaint you should follow the grievance process which can be found in Chapter 11 of the Staff Handbook.

Complaints of bullying, harassment and victimisation will:

- Be treated seriously;
- Be dealt with confidentially where possible (subject to appropriate disclosure of information)
- Be dealt with under the appropriate existing guidelines (e.g. grievance/ disciplinary procedures etc);
- Be dealt with promptly;
- Result in the necessary management support for anyone who raises a concern/complaint, or instigates proceedings or who supports a colleague in so doing; and
- Be recorded and monitored by HR.

Further information on grievances can be found in the Staff Handbook here.

2.16.8 Outcomes

There are a number of positive outcomes which can be achieved when behaviour which might be construed as bullying or harassment, is challenged and addressed.

Possible outcomes include:

- A positive change in behaviours;
- Agreement between parties on standards of behaviours;
- Assisting people to understand the impact of their behaviours on others;

- Team or personal development; and
- A renewed feeling of self-worth or confidence.

The business benefits of taking action may include:

- Highways England maintaining a reputation as a fair and responsible employer, who can attract and retain a diverse workforce, and genuinely understand the needs of a diverse range of customers:
- a reduction in discrimination cases that lead to formal or employment tribunal action;
- improvement in staff engagement;
- a reduction in stress related sickness; and
- evidence that any bad practice is being reported and people are not keeping quiet or suffering in silence, when inappropriate behaviour is witnessed or experienced.

2.16.9 Dignity at Work Questions and Answers

Q1. What should I do if I feel I am being bullied, harassed, discriminated against or victimised?

The individual(s) may not appreciate that their behaviour is unacceptable to you and you should make every effort to address the unacceptable behaviour with the individual informally at an early stage where this is appropriate. This will alert them to the fact that you find their behaviour inappropriate and undesirable and give them an opportunity to stop.

In the first instance you should approach the individual(s) concerned and ask them to stop the unacceptable behaviour.

If the behaviour continues or it is not appropriate to raise the matter directly with the individual(s), you are advised to discuss your complaint informally with your line manager or their line manager or your HR business contact if this is your preference.

If you are not satisfied with the outcome of the informal process you can raise the issue formally through the grievance procedure.

Q2. What should I do if I am being subjected to bullying, harassment, discriminiation or victimisation by a third-party (e.g. a contractor)?

You should initially seek to resolve the matter informally, as you would for any other situation. If this is not successful, you should alert your manager and raise a complaint, this may involve using the third party organisation's own complaint procedure. They will then investigate the complaint and decide what action is appropriate. In the meantime, your manager will take any reasonable steps to safeguard you from further harassment/ bullying within the Highways

England working environment. It is suggested you keep a record of the incident(s) and when your complaint was officially lodged.

Q3. What should I do if I am accused of bullying or harassment?

If someone tells you that you have offended them then listen to what they say and accept that they have considered your behaviour offensive, despite your own view. Remember that harassment occurs when your actions are viewed or perceived to be unacceptable by the recipient, regardless of your intentions.

Where an individual asks you to stop behaving in a way which they find unacceptable, you should take steps to change your behaviour so the situation does not occur again. This does not prevent you taking legitimate management action where performance or other issues are being addressed but you may need to consider the tone or manner in which the issues are tackled (e.g. in private).

If a formal grievance is raised against you this is potentially a disciplinary matter so consideration will be given to investigating the complaint in accordance with Chapters 3 and 11 of this Handbook. You will be provided with a copy of the complaint.

While the matter is being investigated it **may** not be possible for you and the complainant to continue to work together so consideration will be given to the working arrangements. This may mean arranging a temporary transfer (of location or line management responsibilities) for you and/ or the individual concerned. Management, with support from HR, will need to consider the practical implications of moving/ suspending the alleged offender first (where this is considered necessary, taking into account the individual circumstances of the case). If this is not practical or appropriate then it may be necessary to consider a move or change of line management for the complainant.

Formal suspension will only be appropriate in the most serious cases which could lead to charges of serious or gross misconduct. This is not a disciplinary penalty and does not imply any pre-judgement about the merits of the case.

You are entitled to support from your line manager. You may also wish to speak in confidence to a Trade Union representative and/ or an advisor from the Employee Assistance Programme

Q4. What are my responsibilities as an employee?

We are all responsible for our own behaviour and ensuring that we treat each other with dignity and respect therefore contributing to a work environment which is free from bullying and harassment. You can help to do this by:

- Being aware of your own behaviour

- Taking a stand if you think inappropriate jokes or comments are being made
- Making it clear to others when you find their behaviour unacceptable
- Intervening, if possible, to stop harassment or bullying and giving support to recipients
- Making it clear that you find harassment and bullying unacceptable
- Reporting harassment or bullying to your line manager, their line manager or (exceptionally) Human Resources
- Supporting Highways England in the investigation of complaints; and to
- Ensure you do not prejudge or victimise the complainant or alleged harasser if a complaint of harassment or bullying is made

As Highways England employees we are also expected to uphold the Highways England code of conduct and work towards implementing the Government-wide strategy 'Promoting Equality, Valuing Diversity' which includes specific requirements on creating inclusive behaviour and culture.

Q5. What are my responsibilities as a manager?

Managers have a duty to demonstrate appropriate language and behaviour and lead by example. Members of their team, both Highways England employees and non-Highways England employees, who use inappropriate language or behaviour must be dealt with appropriately and as soon as practicably possible.

Managers must ensure that their team members are fully aware of the implications of not complying with this policy.

Managers have a responsibility to:

- Be self aware. Set a good example by their own behaviour, treating everyone with respect and being assertive rather than aggressive.
- Make sure that staff understand the standards of behaviour which are expected of them and what the acceptable boundaries are. All issues must be tackled and dealt with early, recognising they may also affect more than the individual concerned, impacting on staff morale/ engagement. Managers should not simply move an individual as an alternative to dealing with an issue.
- Ensure that there is a supportive working environment.
- Intervene to stop any forms of inappropriate behaviour, bullying or harassment; and to listen and deal with any complaints reported to them in a supportive, considered manner.
- Be aware and take action where individuals are showing signs of emotional, physical and/or psychological distress.
- Be fair, consistent and proportionate in their behaviours, actions and decisions.
- Encourage dialogue between staff, the right word at the right time.

- Ensure staff have access to reasonable adjustments where they require them. Further information on reasonable adjustments can be found here.

Q6. What is discrimination?

The Equality Act gives definitions of the different types of Discrimination:

- **Direct Discrimination** – This occurs when a person is treated less favourably than another person because of a protected characteristic they have or are thought to have, or because they associate with someone who has a protected characteristic.

- **Discrimination by Association** – This applies to race, religion or belief, sexual orientation, age, disability, gender reassignment and sex. This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

- **Perception Discrimination** – This applies to race, religion or belief, sexual orientation, age, disability, gender reassignment and sex. This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

- **Indirect Discrimination** – This applies to race, religion or belief, sexual orientation, age, disability, gender reassignment, marriage and civil partnership and sex. Indirect discrimination can occur when there is a condition, rule, policy or practice that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if the organisation can show that it has acted reasonably and that it is a 'proportionate means of achieving a legitimate aim'.

The Highways England policy on discrimination goes beyond the definition outlined in the Equality Act, details of this can be found in Chapter 2A Section 2.12.

Q7. What is bullying?

Bullying can be obvious and overt and therefore, easily recognisable. Examples may include:

- Deliberately ignoring or excluding people;
- Circulating e-mails expressing offensive views or language,
- Unacceptable voicemails/text messages;

- Spreading malicious rumours or gossip;
- Spontaneous rages, often over trivial matters; and
- Physical threats or actual acts of aggression/ violence
- Contact which is unwanted.

Some bullying can be rather more subtle, thereby making it difficult for even the ‘victim’ to recognise. Some examples might be:

- Deliberately withholding information or supplying incorrect information;
- Deliberately sabotaging or impeding work performance;
- Setting of an unreasonable workload; i.e.: setting a person up to fail
- Unreasonably demanding excessive working hours;
- Imposition of impossible deadlines without cause; and
- Blocking applications for promotion or training without cause or reason.

Bullying is slightly different from harassment as it is intentional. Each incident may not seem significant to the objective observer when taken in isolation; however it is important to recognise there is a cumulative effect and each incident is building on the last.

Bullying may manifest itself in the following forms:

- Within a group where one individual imposes themselves as 'leader';
- Where a group of people 'gang up' on another - 'peer group’ bullying or ‘pack mentality’
- Managers or supervisors abusing their power
- Where an individual deliberately seeks to undermine their own manager (i.e. bullying upwards).

Unlike harassment, which is defined in law, there is no single definition of bullying. The Advisory Conciliation and Arbitration Service (ACAS) states that bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means **intended** to undermine, humiliate, denigrate or injure the recipient.

Bullying may also be defined as the persistent use of behaviour which is **designed** to undermine a person’s self esteem and confidence; or may be a single incident involving aggressive or abusive behaviour **designed** to intimidate or humiliate.

Q8. What is harassment?

Whist in practice, **harassment** often replicates the kinds of behaviour or actions associated with bullying; it is distinct from bullying in that it is associated with discrimination law and the personal characteristics of the recipient. It can be unwanted conduct that is persistent or an isolated incident. Harassment is defined as unwanted conduct related to protected characteristics which:

- has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person
- or is reasonably considered by that person to have the effect of violating his or her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him or her, even if this effect was not intended by the person responsible for the conduct.

Even if the behaviour is not meant deliberately, it can still be considered to be harassment where a reasonable person would conclude that the behaviour would humiliate, offend or cause an individual unnecessary distress.

Some forms of harassment will constitute unlawful discrimination, in particular if it relates to a protected characteristic (gender, race, disability, sexual orientation, age, gender reassignment, religion or belief, pregnancy and maternity and marital status).

Q9. What is victimisation?

Victimisation is treating someone less favourably than others **because** he or she has, in good faith either:

- complained (whether formally or otherwise) that someone has been bullying or harassing him or her
- or has witnessed someone being bullied or harassed
- or has supported someone to make a complaint
- or has given evidence in relation to a complaint
- or is a member of a Trade Union.

Similarly to bullying, victimisation can be overt and obvious or subtle and harder to recognise. Some examples are below:

- Deliberately ignoring or deliberately excluding people;
- Spreading malicious rumours;
- Removing areas of responsibility without cause or consultation; and
- Deliberately withholding information or supplying incorrect information.

Q10. Is managing poor performance bullying?

The genuine action of identifying weaknesses in performance does not of itself constitute harassment or bullying, unless the way it is done constitutes bullying, harassment or victimisation.

The policy is designed to support the management of individual performance effectively. The essence of good performance management involves setting SMART objectives; giving prompt, clear and honest feedback on

performance; identifying the gaps in performance and helping individuals to bridge the gap through support and development. Where performance still does not meet the required standard, unsatisfactory performance should be addressed in accordance with Chapter 7 of the Staff Handbook.

While it may be understandable for a manager to express frustration and disappointment when an individual does not meet the standards expected, feedback should be provided in private and in a considered manner – with a focus on personal development and continuous improvement. Managers should guard against reacting in the heat of the moment but if this does occur as an isolated reaction it is unlikely to amount to bullying as there will be no intention to intimidate or humiliate the individual.

Q11. What are the myths behind and the impacts of bullying, harassment and victimisation?

Some of the myths behind why bullying and/or harassment take place are:

- **"It was only a bit of banter"** A common excuse given to Employment Tribunals to explain why harassment has occurred is that it was just "banter". While it may be intended as kidding, joking or banter, it may be perceived as ridiculing, taunting and deriding. Importantly, it is the recipient's perception that is key; no matter how innocently the banter was intended.

- **"People who are bullied or harassed provoke it themselves"** It is illogical to believe that anyone would invite behaviour that they find offensive.

- **"It's just the natural order of things"** Bullying, harassment and victimisation are often exhibitions of power and insensitivity. To be treated with dignity is a basic human right of every individual.

- **"If I challenged it, it would spoil the atmosphere at work"** Employers have a duty to provide a safe and healthy working environment as far as is reasonably practicable. If someone is being bullied or harassed, there already is a bad atmosphere.

Q12. What action will be taken against employees making malicious allegations?

Highways England will assume that all complaints are made in good faith unless there are clear and strong reasons for believing otherwise. Making vexatious or malicious complaints against others is unacceptable, if a complaint is found to be made in bad faith this may result in disciplinary action. However, no complaint will be considered to have been made in bad faith simply because it is judged to be unfounded after investigation.

Q13. What action will be taken against employees found to have bullied etc?

If following the conclusion of a formal investigation the Decision Officer concludes that allegations of bullying, discrimination, harassment or victimisation are upheld then action will taken against the in line with the disciplinary policy (link to Staff Handbook Chapter 3B Section 3.2 Maintaining satisfactory standards of conduct). This could result in a disciplinary penalty up to and including dismissal.

Q14. What happens if my allegations of bullying etc are upheld?

Following conclusion of a formal investigation it is for the Decision Officer to determine whether or not allegations are upheld. The Decision Officer is then responsible for notifying all parties about whether or not the allegations are upheld. If their decision results in disciplinary against an individual this information will not be shared with you.

Q15. What is the role of a trade union rep?

The unions and Highways England agree that a preventative collective approach is more productive than dealing with each individual case.

However where a trade union member believes they are being bullied, or they are accused of bullying they have the right to union representation. In these circumstances the role of the union rep is not to take sides but to assist their member through the process and offer any support that they may need.

Q16. What do I do if I am being bullied by a trade union rep?

Unions do not tolerate bullying.

If you are a union member you may want to raise your concern with a senior union rep or full-time union officer.

All members have a right to representation and any complaint will be dealt with seriously.

Whether you are a union member or not you should let the rep know that you do not find their behaviour acceptable and ask them to stop. If the behaviour does not stop then you should follow the process for any allegation of bullying.

Q17. Where can I find further information and advice?

Further information and support about bullying and harassment is available from Human Resources business contacts that are:

HR Business Partners

HR Reward and Performance Team

HR People Management Support Team

Reasonable Adjustments Manager

Other helpful links and telephone numbers:

Employee Assistance Programme – Available through PAM Assist; their website is www.pamassist.co.uk (username – highwaysengland and password – highways1) and support is available 24/7 by calling freephone 0800 882 4102.

ACAS – dedicated information on Bullying and Harassment