

## **Guide to Dignity at Work and Equality and Diversity including Discrimination, Harassment and Victimisation**

### **Introduction**

1. This guide for managers and employees, provides further information on a number of areas which specifically relate to the Equality Act 2010 and which are covered by the dignity at work policy and procedure. These are:
  - Discrimination including:
  - Harassment (including third party harassment)
  - Victimisation
2. The Equality Act 2010 harmonised and replaced much of the previous discrimination legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995).
3. The 'protected characteristics' which qualify for protection under the Equality Act 2010 are:
  - Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race
  - Religion and belief
  - Sex
  - Sexual orientation
4. The issue of bullying is not covered under the Equality Act 2010 specifically but is covered by the dignity at work policy and procedure. Bullying is offensive, intimidating, malicious or insulting behaviour, and/or abuse or misuse of power that is meant to undermine, humiliate or injure the person on the receiving end e.g. picking on someone, ridiculing or setting someone up to fail, making threats or comments about someone's job security without good reason.
5. Discrimination including harassment and victimisation related to any of the protected characteristics or bullying will not be tolerated and will be treated in line with the dignity at work policy and procedure.

### **Discrimination**

6. The Equality Act sets out a number of different types of discrimination and in summary these include:
  - direct discrimination where someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (see perception discrimination below) or because they are associated with someone with a protected characteristic (see association discrimination below).
  - association discrimination where someone is associated with someone with a protected characteristic (e.g. a child, parent or partner)
  - perception discrimination where someone is perceived to have a protected characteristic but does not actually possess it.
  - indirect discrimination where a particular rule, practice or requirement disadvantages people who share a protected characteristic unless this can be justified.
  - harassment – please see below
  - victimisation - please see below
7. For further details and examples of the different types of the discrimination under the [Equality Act 2010](#) please see the [Equality and Diversity policy and procedure](#)

### **Harassment - types of harassment under the Equality Act 2010**

8. For behaviour to count as harassment under the Equality Act 2010, it has to be one of three types:

### **Unwanted behaviour related to the protected characteristics**

9. Unwanted behaviour related to the protected characteristics relates to behaviour which has the purpose of:
  - Violating a person's dignity, or
  - Creating for that person an intimidating, hostile, degrading, humiliating or offensive environment
10. 'Unwanted behaviour' can include any kind of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other behaviour, whether or not it is physical. This applies:
  - where the person who is on the receiving end of the unwanted behaviour has a protected characteristic, or
  - where there is any connection with a protected characteristic. For example: A person might be incorrectly perceived to have a characteristic or they may be associated with a person who has a characteristic, such as a family member.

11. It may also apply where the person does not fall under either of the categories above, or that the unwanted behaviour is not aimed specifically at them if they find that it violates their dignity or creates for them an intimidating, hostile, degrading, humiliating or offensive environment.

For example:

A white employee in an office where most of the other employees are also white finds the habitual racist comments of another member of staff also creates a hostile and intimidating environment for them. This may amount to harassment.

12. In addition it may apply where the person is subject to harassment related to a protected characteristic even where it is known that they do not have this characteristic.

For example:

An employee is subjected to homophobic 'banter' and name calling, even though his colleagues know he is not gay and he is aware that they know he is not gay. Nevertheless this may amount to harassment related to sexual orientation.

### **Sexual harassment.**

13. Sexual harassment takes place when a person does something of a sexual nature (which might be verbal, non-verbal or physical) which has the purpose or effect of:

- violating a person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.
- 'Of a sexual nature' can include unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature.

### **Less favourable treatment because of submission to or rejection of previous sex or gender reassignment harassment**

14. This is where a person is treated worse than someone else, or less favourably, because he or she either submits to or rejects sexual harassment or harassment related to sex or gender reassignment.

For example:

A manager propositions one of his team, she rejects his advances and is then turned down for promotion which she believes she would have got if she had accepted her boss's advances. This almost certainly amounts to harassment.

### **Points related to all types of harassment**

15. Other points to remember about all the types of harassment:

- The word 'unwanted' means 'unwelcome' or 'uninvited'. Sometimes a single incident will be self-evidently unwanted, such as the use of suggestive remarks or obscene language (which the majority of staff would find offensive), 'groping' or racial abuse. For a series of less serious incidents, it may be necessary for someone to object to the behaviour for it to be clear that it is unwanted. If it persists after they have asked for the behaviour to stop then it may amount to harassment.
- If the person carrying out the unwanted behaviour actually intends to violate the other person's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for them, this will of itself amount to harassment and the effect on the individual will need to be considered.
- If the person carrying out the unwanted behaviour does not intend to violate someone's dignity or create a hostile environment and so on, the behaviour will amount to harassment if it has the effect of creating such an environment and it is reasonable to consider that the behaviour would have that effect.

For example:

An employee with a mobility impairment finds that a colleague has referred to him a number of times as 'being wheelchair bound' or 'suffering from a disability'. The employee finds this offensive and feels that his dignity has been violated. He should raise the matter with his manager or under the dignity at work policy if he wishes. If the matter persists the behaviour is potentially harassment even though his colleague may not have originally intended or been aware that using these terms would have the effect of undermining his dignity or creating a hostile environment for him.

### **Third Party Harassment**

16. The Equality Act makes employers potentially liable for harassment of job applicants and employees by people (third parties) who are not employees unless they have taken steps to prevent harassment occurring. Third parties could include customers or service users etc.

17. This will apply when harassment has occurred on at least two previous occasions, managers are aware that it has taken place, and have not taken reasonable steps to prevent it from happening again.

18. The number of occurrences of third party harassment will count whether the harassment is committed by the same third party or another third party.

For example:

A Pakistani library assistant repeatedly informs his manager that he is upset by a member of the public who regularly makes derogatory remarks that jobs in England should be for the English and not given to foreigners. If his manager does nothing to try to prevent this from happening he himself would be liable for racial harassment.

19. Managers should act as soon as they become aware of any incidents of third party harassment and should be able to show that they have taken reasonable steps to prevent the harassment occurring again by:
  - encouraging employees to report any acts of harassment by third parties
  - taking prompt action on every complaint of harassment by a third party
  - behaving supportively towards any employee who complains of such harassment,
  - behaving in a proactive way to prevent the harassment taking place including implementing measures which make clients, customers, or visitors aware of their obligations not to harass employees. This could include displaying a notice forbidding any potentially discriminatory comments or abuse on the grounds of age, sex, race religion, sexual orientation.
  
20. Managers who receive a complaint of third party harassment should ensure that the matter is considered in line with the principles set out in the dignity at work policy and procedure and that the general standards set out in this policy and procedure are applied in terms of investigating and taking action to prevent re-occurrence.
  
21. Managers should ensure that a full record of the incident is taken from both the employee and any other witnesses. Full consideration should be given to the seriousness of the incident and the options for action including, investigating the matter further, displaying more prominent notes about customer behaviour (as above) and in more serious cases involving the police or banning customers from that particular service or similar alternative measures if this is appropriate. Managers should also comply with guidelines which may exist in some service areas for dealing with complaints from service users and customers.
  
22. In addition to the above complaints against contractors or an employee of a company providing services to the Council should be raised with the contractor/company involved so that where it is justified, action can be taken within the companies own rules or policies or under the service agreement with the Council as appropriate.
  
23. Where the complaint is against an elected member and a potential breach of the [member's code of conduct](#) a complaint can be made to governance team using the [member's complaints form](#).

## Victimisation

24. Employees may raise complaints about victimisation under the dignity at work policy and procedure.
25. Victimisation occurs when an employee is treated less favourably than someone else because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An example of victimisation might be where opportunities for training or progression have been blocked because an employee has previously made a complaint.

For example:
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A non disabled employee gives evidence on behalf of a disabled colleague at a disciplinary hearing against a manager and is subsequently relocated to a different team with no promotion prospect and less responsibility because of their action at the hearing. This would constitute victimisation under the act which is unlawful.
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