



Brook Learning Trust

Fairness at Work Policy and Procedure

and

Guidance for Dealing with Complaints of Harrassment & Workplace Bullying

At Brook Learning Trust we bring together our unique academies in our belief in the power of education to change lives and communities. It is our steadfast purpose to challenge and defy the barriers that constrain the educational progress of any child. We set high aims for aspiration and secure collective responsibility for all our children's achievements. Our work is underpinned by the values of Integrity, Respect, Courage, Optimism, Excellence and Accountability.

What is Harassment?

Harassment takes many forms, occurs on a variety of grounds and may be directed at one person or many people. In general terms it can be described as behaviour which someone finds unwelcome, intimidating, upsetting, embarrassing, humiliating or offensive. It is essential to remember that it is not the intention of the alleged perpetrator that is key in deciding whether harassment has occurred but whether the behaviour is unacceptable by normal standards and disadvantages the recipient. Most people have heard about sexual and racial harassment, but it may also occur on the basis of differences such as disability, sexual orientation, appearance, age, religion or beliefs.

What is Workplace Bullying?

Anyone can be subject to workplace bullying. This is the abuse of power or position to coerce others by fear and causes chronic stress, anxiety, loss of confidence, lower productivity, absenteeism and even resignation.

Managers making unpopular demands and asking for improvements in performance does not necessarily constitute harassment or workplace bullying.

Common Forms of Harassment and Bullying

Harassment and bullying can range from extremes such as violence to less obvious forms like ignoring someone. Whatever the form, it will be behaviour, which is unpleasant. Forms include:

- Physical contact, obscene gestures and public humiliation
- Offensive jokes, offensive language, gossip, slander and verbal abuse
- Displays of offensive materials, posters, pin-ups, graffiti, and badges
- Isolation, non-co-operation, withholding information and exclusion
- Spying, stalking and intrusion by pestering
- Intimidating behaviour and systematic undermining of confidence

BLT Employee Grievance Procedure

This procedure may be appropriate for dealing with an employee's discontent if they believe management have seriously mishandled allegations made under the Trust's harassment/workplace bullying procedures. Such a grievance would automatically be heard at Stage 2 of the procedure.

Advice and Counselling

Wherever possible, an employee who is considering making a complaint of harassment should have access to someone who can give them sympathetic, informed advice and counselling.

A distinguishing characteristic of harassment is that employees subjected to it are very vulnerable and are often reluctant to complain. They may be too embarrassed or unsure as to how to make a complaint, or concerned that it will be trivialised. They may fear reprisals. People suffering from harassment may not want attention focused on the situation; they just want the unwanted behaviour to stop

Similarly, the respondent may be completely unaware that their behaviour can be seen as harassment, and suffer anxieties and guilt about the distress caused. Or they may be unjustly accused. Counselling can also, therefore, be valuable for the individual/s whose behaviour has been found or perceived to be unacceptable. They may be unaware or insensitive to the impact of their actions and counselling can help them change their behaviour and prevent the occurrence of further incidents.

Harassment/Workplace Bullying Procedure

In order to ensure harassment/workplace bullying complaints are resolved speedily and in a fair and equitable manner, the following procedure will be adopted in all cases of alleged harassment/workplace bullying (whether intentional or not):

Stage 1 Informal Action

1.1 Personal Action

As the first step in dealing with a harassment matter, personal action may be all that is needed to resolve the issue. The employee should make it clear where possible to the person concerned that their behaviour is unwelcome and offensive and should be stopped. The employee may want to ask a workplace colleague or TU representative to be with them when they do this.

This action may be enough to stop the harassment and prevent it happening again.

Employees should keep a written record of the incident(s) including the time, date(s) and place of the incident(s), a full description of what occurred and the name(s) of any witness (s).

1.2 Action by a Person other than the Complainant

Harassment can often be stopped by informal, early and local intervention.

In circumstances where it is too difficult or embarrassing for the employee to do this on their own behalf, the initial approach to the respondent may be made by a workplace colleague or TU representative and wherever possible, someone of the same sex as the complainant should be available to assist in this capacity. If a member of a trade union, this may be the trade union representative.

Where the complaint is about the Principal, the issue may be raised with the Chief Executive Officer (CEO).

Where a Principal has a complaint the issue may be raised with the CEO or, if it is about the CEO, then with the Chair of the Trust.

Other initial action by the Principal, CEO or Chair of the Trust (as appropriate) might include:

1.2.1 To approach the person whose behaviour is causing offence

1.2.2 Describing the behaviour, not the person and give the person accused of harassment the opportunity to respond

1.2.3 Describing the possible impact of the behaviour - do not discuss or dispute the person's intentions

- 1.2.4 Explaining to the offending person that the behaviour is unwelcome and may be against academy's policy.
- 1.2.5 Asking for a change in behaviour
- 1.2.6 Seeking commitment to change
- 1.2.7 Letting the complainant know what action has been taken, to encourage them to come back should there be a recurrence

However, if despite informal action the harassment continues or other consequences result, eg victimisation, discrimination, a formal complaint may be made by the employee alleging harassment.

An informal approach would be inappropriate in a case, which potentially amounts to serious misconduct and affects the safety and well being of the person or other people at work.

Stage 2 Mediation

Where informal action has been tried and failed both the complainant and respondent may agree the services of a mediator should be introduced to resolve the situation. This will be a member of the Trust Executive or a member of the SLT of one of the other Trust academies. Professional trade union associations may also provide mediation services.

Stage 3 Formal Action

3.1 Making a Complaint

In the case of formal action an employee who believes that he/she has been the subject of harassment/workplace bullying should report the alleged act to his or her senior member of management or the Principal. An employee may choose to bring a complaint in the first instance to someone of his or her own gender or a TU representative.

Where the complaint is about the Principal, the matter should be raised with the CEO who will inform the Chair of the appropriate Academy Council.

Where the Principal has a complaint the matter should be raised with the CEO or, where the complaint is about the CEO, the matter should be raised with the Chair of the Trust.

Any complaint should be made within 3 months of the last incident occurring.

In all cases the employee reporting the alleged act must be prepared to provide a written statement setting out the allegations, requesting the incident(s) be formally investigated.

Details of the alleged incident, including dates and times, should be recorded by the person alleging harassment on the complaints form at Appendix 1.

The individual accused of harassment has the right to know what the allegation is and who is making the complaint; see Appendix 2.

If the complainant does not wish to be identified it is impossible to take disciplinary action. However the Principal or CEO must still take such action as is practicable to reinforce its policy on harassment. This can include general reminders about standards of behaviour through staff meetings, etc.

3.2 Investigation

Where there is any doubt about whether a formal investigation should take place, you should seek advice from the HR Manager.

Where a formal complaint is made, it is important to conduct a prompt, thorough and impartial investigation with due regard to the rights of both the complainant and the respondent in accordance with the Trust Staff Disciplinary Procedure. Anyone connected with the allegation should not conduct the investigation.

The investigation should concentrate on establishing the facts, together with the impact of the alleged harassment. Confidentiality must be maintained by the complainant and the alleged harasser. However, the complainant must understand that there cannot be full confidentiality, since the investigation may involve other potential victims. There may also be a requirement to give evidence at a later stage.

Both parties should be interviewed by an independent investigating team consisting normally of two people nominated by the Principal, the CEO or the Chair of the Trust as occasion demands, so that an objective view can be formed of events leading up to the complaint. Wherever possible, the composition of the investigative team should include representation that reflects the nature of the case.

3.3 The Right to be Accompanied

In any investigation, both the complainant and the respondent will be entitled to be accompanied by a workplace colleague or TU representative.

3.4 Records

A record of the outcome should be shared with both parties.

A record of the complaint(s) and investigation should be kept for at least 18 months, including names of parties, dates, nature and frequency of incidents, action taken, follow-up and monitoring. The academy should reserve the right to use this information if there is any recurrence of the allegations made. These should be held in a secure file by the HR Department. The records should not be included with the personal files of the individuals concerned.

3.5 Timescales

Where the Principal, CEO or Chair of the Trust decides an investigation is appropriate, the investigating officer(s) must be nominated within a week of the complaint being made, and the investigation completed within two weeks from the date of nomination, or as soon as practically possible. In the event of any delay, eg, one or more of the involved parties being unavailable, new timescales must be agreed and confirmed to allay any further distress to those involved.

3.6 Suspension during Investigation

A decision must be taken about the seriousness of the allegation and whether it is appropriate for the complainant and the respondent to continue working together during the investigation. It may be advisable to suspend the person being complained about in accordance with the disciplinary procedure pending a full investigation and decisions as to possible formal disciplinary action.

Occasionally it may be appropriate for the complainant to be given some additional paid leave, with their agreement.

4 After the Investigation

Complainant

4.1 Meeting

The complainant should be invited to a meeting to discuss their harassment and/or bullying complaint. The investigation report will feed into this meeting. The complainant may be accompanied/represented by either an employee of their choice or a TU representative.

Note: witnesses may be involved in the meeting if appropriate.

Following the meeting the complainant must be written to with the outcome of the investigation and the decision of the Principal, CEO or Chair of the Trust as to whether or not the complaint is upheld. The complainant should also be notified of their right to appeal.

4.2 Appeal

If the complainant wishes to appeal they should set out the grounds of the appeal in writing and forward to the Principal, CEO or Chair of the Trust as appropriate, within ten working days of receiving the written decision.

Normally a Panel of three hitherto uninvolved Trustees and/or Academy Councillors will meet to hear the appeal. The Panel should hold a formal meeting with the complainant and their TU representative or workplace colleague within 10 working days of receiving the appeal. The decision of the Panel will be notified to the employee and their representative within five working days of the hearing.

This is the final stage in this procedure and the decision of the appeal Panel is final.

Respondent

A record of the outcome of the investigation should be shared with the respondent along with the decision as to whether or not the complaint is upheld. This may be in writing rather than at a meeting.

5 Disciplinary Procedure

Decisions about disciplinary action can only be made following a thorough investigation of the allegations and after consideration of all the evidence available.

If the investigation reveals that there is a case to answer, prompt action designed to stop the harassment immediately and prevent its recurrence will be taken through implementation of the Trust Staff Disciplinary Procedure.

In accordance with the Staff Disciplinary Procedure, it may be that the investigating officer is best placed to present the case. In any disciplinary hearing the complainant will be required to attend and those hearing the case may wish to question both parties, and witnesses.

6 After the Procedure

6.1 Where a complaint is upheld

The upholder (individual and/or Panel) may consider that an apology is necessary where allegations are substantiated. It may be necessary to ensure the complainant and respondent do not continue to work together. In a small academy this may not be an option. If appropriate, and wherever

practicable, the complainant should be given the choice of whether he/she wishes to be relocated or be managed by another colleague. Always endeavour to avoid any disadvantage for the complainant.

Support should be offered to the respondent to help address any issues relating to his/her actions or attitude. This may take the form of counselling, training and awareness raising.

6.2 Where a complaint is not upheld

It is important for the complainant to understand they have been believed and that the complaint has been taken seriously. It may not be viable within one academy but consideration may be given, where practicable, to moving one of the employees concerned, rather than requiring them to continue to work together against the wishes of either party. However, neither the complainant nor the respondent should be victimised or suffer any detriment.

If any employee considers that there has been a significant procedural error they retain the right to raise a grievance under the grievance procedure. Such a grievance would be heard at Stage 2 of the procedure and, if upheld the original complaint would be reheard under the harassment procedure.

7 Malicious Allegations

Where a complaint is unsubstantiated and found to be vexatious or of malicious intent, then the disciplinary procedures may be invoked against the original complainant. This is to protect those with genuine complaints.

8 Post-Employment Harassment Complaints

Sometimes allegations of harassment may be made by former employees against an individual employed by the academy. Complaints of harassment will normally only be investigated where the former employee was employed by the Trust within 3 months of the complaint.

In the first instance the complaint should normally be made to the Principal but if it is felt the complaint needs to be pursued further or if the complaint is about the Principal, then the CEO of the Trust should be contacted.

9 Monitoring

It is important that whoever has dealt with the complaint delegates to an appropriate member of staff the task of checking that the harassment has stopped and that there has been no victimisation. Victimisation itself can take a wide range of forms, such as continuing unpleasantness or adverse impact on promotion. Careful monitoring is, therefore, essential to ensure victimisation does not occur.

This procedure is subject to the terms of the Trust Equality Policy. Any data gathered will be confidential and will not identify individual employees.

10 The Law

If the Trust does not deal seriously with complaints of harassment and workplace bullying the complainant may seek redress through the law.

10.1 Protection from Harassment Act 1997

Makes harassment both a civil and criminal offence. The Act provides a remedy for racial, sexual, disability or sexual orientation harassment. Remedies include damages, injunction, unlimited fine and up to 5 years imprisonment.

10.2 Criminal Justice and Public Order Act 1994

Makes any form of harassment, in a public or private place (but not a residential home) a criminal offence.

10.3 Health and Safety at Work etc Act 1974

Legal obligation to take all reasonable steps to look after the health, safety and welfare of staff. Implied duty of care to ensure the environment is harassment free.

10.4 The Equality Act 2010

Provides the right for individuals to pursue claims of harassment through the Employment Tribunals. In recent years the courts and employment tribunals have greatly expanded and extended the definition and scope of behaviours which constitute harassment and work place bullying. There is now a wealth of case law to show harassment can be a detriment under this Act and an inadequate response to complaints may put the Trust at risk of costly litigation.

As well as the legal requirement to remove the threat of harassment there is an Authoritative European Code of Practice on the Protection of the Dignity of Women and Men at Work with which this policy and procedure complies.

POLICY REVIEW AND RATIFICATION

Policy reviewed bi-annually and ratified by the BLT Board in May

This review by BLT Executive January 2017

Summary of amendments to this iteration: Alteration to previous stages for complainants to follow (stipulated throughout the policy) reflecting the management structure of the multi academy trust, replacing the Chair of Academy Council with the CEO and Chair of Trust for involvement should the complaint implicate the Principal or the CEO respectively. Also updating of legislation referred to at point 10.

March 2019 – change of review date only

Ratified by BLT Board January 2017

Next review May 2019 to bring in line with the new policies review schedule

**Harassment and Workplace Bullying
Complaint Submission Form**

Name _____

Academy _____

Position Held _____

Email Address _____

Telephone Number/s _____

Date of (last) incident _____

Name/s of witness/es _____
and contact details

Description of complaint (additional information may be attached on a separate sheet)
State clearly the nature of the complaint eg racial/sexual harassment or work place bullying etc

The completed form should be given to the Principal, CEO or Chair of the Trust as appropriate

Harassment and Workplace Bullying Sample Communication

Strictly Private and Confidential

Dear (insert name)

I have informed you verbally that a formal complaint of harassment has been raised against you by * (insert name). I am writing to let you know the nature of the complaint(s) and to explain the process which will now be followed.

Statement(s) have been provided detailing incidents and conversations which have allegedly taken place over the last (insert period of time). The nature of the complaint/s is:

- (a)
- (b)
- (c)

I enclose a copy of the Trust Fairness at Work Policy. As you will note from the policy, the complaints against you will be fully investigated under the procedure outlined in the document. Independent investigating officers will be identified and tasked with carrying out this exercise.

The investigating officers will be asking for a statement from you and I would like to advise you that at any interview in respect of this matter you have the right to be represented by a recognised trade union representative, or by a workplace colleague of your choice. As part of the process, statements will be taken by the investigating officers from all persons implicated in the submitted complaint/s.

When the investigations are complete, I will review the findings to determine whether there is a disciplinary case for you to answer and will notify you and your representative accordingly. However, you will understand that the investigation report will remain confidential and will not be copied to you.

I wish to reassure you that I will deal with this matter sensitively, fairly and confidentially. I would ask you to maintain confidentiality and in particular you should not discuss this matter with the complainant or with any potential witnesses while the investigation is ongoing. If you have any queries relating to the process outlined above please ask me. I enclose a copy of this letter for you to give to your representative.

Yours sincerely

(signed)

Principal/CEO/Chair of the Trust

Harassment and Workplace Bullying Complaint/s Confidential Disclosure Policy

1 General Principles

- 1.1. The Public Disclosure Act 1998 places a legal responsibility on everyone, including academies, to ensure matters of serious public concern can be addressed.
- 1.2. Employees are often the first to realise that there may be something seriously wrong within the academy. However, they may not express their concern because they feel that speaking up would be disloyal to their colleagues or to the academy. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.3. The Trust is committed to the highest possible standards of openness, probity and accountability. In line with that commitment employees and others with serious concerns about any aspect of the academy's work should be able to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis.
- 1.4. This policy document makes it clear that staff can do so without fear of reprisals. This Confidential Disclosure Policy is intended to encourage and enable staff to raise serious concerns within the academy rather than over-looking a problem or raising the matter outside.
- 1.5. The policy applies to all employees; however the Public Disclosure Act also covers those contractors working for the Trust on academy premises, for example voluntary helpers, agency staff, builders, etc. It also covers suppliers and those providing services under a contract with the academy in their own premises.
- 1.6. This procedure is in addition to the Trust complaints procedures and other statutory reporting procedures. The Trust is responsible for making staff aware of the existence of this and other relevant policies.

2 Aims and Scope of this Policy

a. This policy aims to:

- Encourage employees to feel confident in raising serious concerns and to question and act upon concerns about practice
- Provide avenues for employees to raise concerns and receive feedback on any action taken.
- Ensure that the Trust acts within the law and in particular within the Public Interest Disclosure Act 1998.
- Ensure that employees receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied.
- Reassure employees that they will be protected from reprisals and/or victimisation.

b. There are existing procedures in place:

To enable employees to lodge a grievance, relating to their own employment or a harassment complaint (BLT Employee Grievance Procedure & BLT Fairness at Work
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Policy). This Confidential Disclosure policy is intended to cover serious concerns that may fall outside the scope of other procedures.

These include:

- Conduct which is an offence or breach of law
- Disclosures related to miscarriages of justice
- Health and safety risks, including risks to children and the public as well as other employees where they have not already been raised under other procedures
- Damage to the environment
- The unauthorised use of public funds
- Possible fraud and corruption
- Other unethical conduct
- Waste/frivolous expenditure

c. Thus, any concerns that employees have:

About any aspect of the education service provision or the conduct of staff, members of the Academy Council, the Trust Executive and Board of Trustees (and others acting on behalf of the Trust) can be reported under the Confidential Disclosure policy. This may be about something that:

- Makes the employee feel uncomfortable in terms of known standards, their experience or the standards they believe the Trust subscribes to; or
- Is against the academy's policies; or
- Falls below established standards of practice; or
- Amounts to improper conduct

d. This policy does not replace the Trust Complaints Procedure:

(In terms of which people other than employees may raise concerns about their treatment, or their child/ren's treatment, by Trust staff or as a result of Trust policies and procedures) but should help where any employee feels the need to raise serious matters of general concern.

4 Safeguards - Harassment or Victimisation

- a. The Trust is committed to good practice and high standards and wants to be supportive of employees.
- b. The Trust recognises that employee/s' decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice.
- c. The Trust will not tolerate harassment or victimisation (including informal pressures) and will take action to protect staff when they raise a concern in good faith.
- d. Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect staff.

5 Confidentiality

- 5.1 The Trust will do its best to protect employee/s' identity in the event of the raising of a concern by individual/s who do not wish their name/s to be disclosed. However, any formal investigation process will reveal the source of the information, and a statement by the employee will be required as part of the evidence.

6 Anonymous Allegations

- a. This policy encourages staff to put their name/s to any allegation whenever possible.
- b. Concerns expressed anonymously are much less powerful, but they will be considered.
- c. In exercising discretion, the factors to be taken into account would include:
 - The seriousness of the issues raised
 - The credibility of the concern; and
 - The likelihood of confirming the allegation from attributable sources

7 Untrue Allegations

- 7.1 If an employee has made an allegation in good faith, but it is not confirmed by the investigation, then no action will be taken against that employee. If, however, they make malicious or vexatious allegations, disciplinary action may be taken against them.

8 How to Raise a Concern

- a. The earlier staff express a concern, the easier it is to take action.
- b. As a first step, the employee should raise concerns with their line manager or the Principal. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice. For example, if it is believed that the Principal or others in management are involved, staff should approach the CEO - see paragraph 10.1.
- c. Concerns are better submitted in writing. The employee should be invited to set out the background and history of the matter, giving names, dates and places where possible, and the reason why they are particularly concerned about the situation. If s/he/they do not feel able to put the concern in writing, they can telephone or meet the appropriate manager, Principal or CEO - also see paragraph 10.1
- d. Although employee/s is not expected to prove beyond doubt the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for the concern to be taken seriously and acted upon.
- e. The employee/s may invite their trade union or professional association to advise and/or raise a matter, on their behalf.
- f. In exceptional circumstances, the employee/s may wish to discuss their concern/s with an independent party in the first instance. In this case, the CEO of the Trust should be approached, who will identify personnel from the Executive Team or another of the Trust's academies to hear the concern.

9 How the Academy will Respond

- a. The action taken by the academy will depend on the nature of the concern. Matters raised may:
 - Be investigated internally
 - Be raised with a relevant external authority
 - Be referred to the Police
 - Be referred to the External Auditor
 - Form the subject of an independent inquiry

- b. In order to protect individuals, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of other specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.
- c. Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is constructed, eg where there is a health and safety issue.
- d. The submission of a complaint or concern will be acknowledged within two working days. Within ten working days of receipt of a complaint or concern, the Principal, CEO or Chair of the Trust will write to the employee indicating how it is proposed to deal with the matter:
 - Giving an estimate of how long it will take to provide a final response
 - Telling the employee whether any initial enquiries have been made; and
 - Telling the employee whether further investigations will take place and, if not, why not
- e. The amount of contact between the Principal, CEO or Chair of the Trust (whoever is considering the matter) and the member of staff raising the complaint or concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the employee.
- f. When any meeting is arranged, staff have the right if they so wish to be accompanied by a trade union representative or a workplace colleague who is not involved in the area of work to which the concern relates.
- g. Steps will be taken to minimise any difficulties which staff may experience as a result of raising a concern. For instance, if staff are required to give evidence in any proceedings, advice will be available to the employee from the Trust HR Department.
- h. The Trust accepts that staff will need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, staff will receive information about the outcomes of any investigations.

10 The Responsible Officer

10.1 The Principal, the CEO and ultimately the Trust Board

Have overall responsibility for the maintenance and operation of this policy. They must maintain a confidential record of concerns raised and their outcomes.

11 How The Matter Can Be Taken Further

11.1 This policy is intended to:

Provide staff with an avenue to raise concerns. If staff are not satisfied, and if they feel it is right to take the matter outside the Trust, the following are possible contact points:

- Relevant professional bodies or regulatory organisations
- The DfE
- A solicitor
- The Police

11.2 If staff do take the matter outside the Trust:

They need to ensure that they do not knowingly disclose confidential information or that disclosure would be privileged (and staff may need to seek legal advice on this matter first)

11.3 Such matters raised outside of academy or Trust:

May still ultimately have to be addressed within the academy or Trust, as detailed above.