

EAST AYRSHIRE COUNCIL

JOINT NEGOTIATING COMMITTEE FOR TEACHING STAFF – 3 JUNE 2010

REVISED HARASSMENT AND BULLYING POLICY AND PROCEDURES

Joint Report by Executive Director of Finance and Corporate Support and Executive Director of Educational and Social Services

1. PURPOSE

- 1.1 The purpose of the report is to seek Joint Negotiating Committee (JNCT) approval for the amendments to the Council's Harassment and Bullying Policy and Procedures.

2. BACKGROUND

- 2.1 The JNCT. at its meeting on 10 February 2010, approved the adoption of a single corporate Harassment and Bullying Policy and Procedures incorporating teaching staff. This policy has since been revised and the main changes are summarised below.

3. PROPOSED CHANGES

- 3.1 The principal changes to the existing Policy and Procedures are as follows:-
- 3.1.1 Any reference to Personnel Services has been replaced by Human Resources;
- 3.1.2 A new paragraph has been added to describe the term Manager used throughout the Policy (paragraph 1.3);
- 3.1.3 The Policy now applies to all employees of the Council as previously Teachers had their Harassment and Bullying Procedures (paragraph 2.9);
- 3.1.4 Account has been taken of the responsibilities of Elected Members (paragraph 3.2);
- 3.1.5 In normal circumstances employees should raise their formal complaint using Form HB/1 to their Executive Director within two weeks of the latest date where a series of incidents have occurred (paragraph 10.2);
- 3.1.6 The deletion of the reference to the investigation taking place in accordance with the investigation process outlined in the Council's Disciplinary Policy and

Procedures as the Council will be developing a Guide to Investigations (paragraph 10.3);

3.1.7 The timescale may be extended in more complex cases and where holiday periods occur during this process (paragraph 10.6);

3.1.8 The process in relation to complaints against Elected Members has been included (paragraph 10.9);

3.1.9 Account has been taken of the Disciplinary Policy for Teachers (paragraphs 11.2, 15.1 and 18.5);

3.1.10 A new section offering counselling and support under Employee Welfare has been added (paragraph 19.1)

3.2 All documentation used to support implementation of the harassment and bullying process will be updated to reflect the proposed changes.

3.3 The revised Policy and Procedures, attached as Appendix1, will support the Council achieve and sustain a corporate and consistent approach to Harassment and Bullying complaints thereby assisting the Council to operate effectively and deliver quality services.

4. COMMUNICATIONS

4.1 Employees will be advised of the revised Harassment and Bullying Policy and Procedures via the Council's intranet site, Ewords and the issue of a relevant PER Circular. A revised Employee Guide and Managers Guide applicable to all Council employees will be issued.

5. FINANCIAL IMPLICATIONS

5.1 There are no additional costs arising from the proposed changes to the Harassment and Bullying Policy and Procedures.

6. POLICY/LEGAL IMPLICATIONS

6.1 The proposed changes will ensure that the Council meets its legislative requirements as an employer and continues to follow best practice guidelines. The proposals meet the pursuit of continuous improvement and Best Value and the guiding principles of the Community Plan.

7. RISK MANAGEMENT IMPLICATIONS

7.1 Changes have been made which will ensure better management of incidents of bullying and harassment.

8. COMMUNITY PLANNING IMPLICATIONS

8.1 There are no community planning implications

9. RECOMMENDATIONS

9.1 The Joint Negotiating is asked to:

- (i) approve the revisions to the single corporate Harassment and Bullying Policy and Procedures incorporating Teaching Staff; and
- (ii) note the contents of the report.

Alexander McPhee
Executive Director of
Finance and Corporate Support
GP/JS
24 May 2010

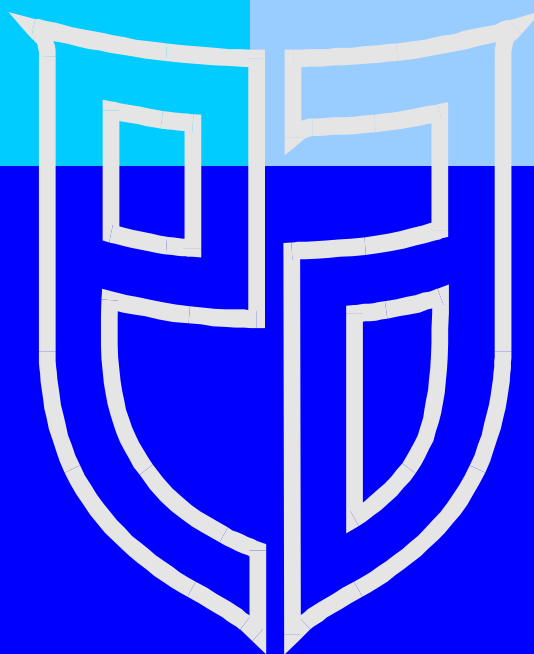
Graham Short
Executive Director of Educational
and Social Services

LIST OF BACKGROUND PAPERS

Current Personal Harassment and Bullying Policy and Procedures (May 2008)

Any person wishing further information should contact Martin Rose, Head of Human Resources (Telephone 01563 576092) or Andrew Sutherland, Head of Service: Schools (Telephone 01563 576126).

EAST AYRSHIRE COUNCIL



HARASSMENT AND BULLYING POLICY AND PROCEDURES

Effective Date: June 2010

To Be Reviewed: Annually

Last Change: May 2008

Per Circular No: 6/08

An Equal Opportunities Employer

HARASSMENT AND BULLYING

POLICY AND PROCEDURES

1. POLICY STATEMENT

- 1.1** It is the Council's intention to build a culture of mutual respect, tolerance and support which will ensure a harmonious working environment where employees treat each other with courtesy and consideration to the benefits of all employees.
- 1.2** The Harassment and Bullying Policy and Procedures will allow the Council to respond effectively to employees' complaints concerning harassment and bullying within the workplace and thereby assist the employees to contribute to the delivery of quality services.
- 1.3** The term Manager used throughout the Policy and Procedures applies to any employee who has delegated authority to undertake supervisory responsibilities as authorised by the Executive Director, Headteacher etc.

2. GENERAL PRINCIPLES

- 2.1** Any behaviour that undermines the culture of mutual respect is totally unacceptable. Harassment and bullying behaviour is unlawful and will be treated as a disciplinary offence.
- 2.2** Any allegations of harassment and bullying will be dealt with seriously and confidentially. They will be handled with sensitivity, tact and fairness.
- 2.3** Employees will be protected from victimisation when making a complaint or acting as a witness, in good faith.
- 2.4** Making false or unsubstantiated allegations with malicious intent will not be tolerated and will be dealt with under the Council's Disciplinary Policy and Procedures.
- 2.5** Where an employee raises a complaint regarding harassment and bullying then this will be dealt with under the Council's Harassment and Bullying Policy and Procedures rather than the Grievance Procedure. An employee cannot use both the Grievance Procedure and the Harassment and Bullying Policy and Procedures relating to the same incident.
- 2.6** Investigations into harassment and bullying complaints will be dealt with as soon as possible but it is acknowledged that due to the complex nature of the

investigation process involved in dealing with these cases that established timescales may not be met.

- 2.7** Both the complainant and the alleged harasser may be accompanied at all stages of the procedures by either a Trade Union Representative or colleague. However, they should not be accompanied by a person who is or who may be a witness in the same investigation.
- 2.8** The Harassment and Bullying Policy and Procedures also apply to work-related functions and activities held outside of normal working hours either on or off the Council's premises e.g. Christmas parties, leaving celebrations, working lunches etc.
- 2.9** The Harassment and Bullying Policy and Procedures apply to all employees of the Council.

3. RESPONSIBILITIES

- 3.1** All harassment and bullying at work occurrences are serious employment issues and the Council is liable for the activities of its employees where they know, or should know, about their misconduct and take no action to prevent it. The Council have a duty of care to provide a safe place and a safe system of work.
- 3.2** Harassment and bullying have a negative effect on employers and employees and both have responsibilities when it occurs. In order to ensure fair and consistent application of the Policy and Procedures, all parties have responsibilities as follows: -

The Council

- Will provide a positive, open and non threatening working environment
- Will take action to prevent harassment and bullying
- Will encourage incidents to be reported
- Will ensure that complaints are thoroughly investigated

Elected Members

- Must show respect for all employees and the role that they play within the Council, treating them with courtesy at all times (with employees expected to show the same consideration in return)
- Must follow the Protocol for relations between Elected Members and employees (attached as Annexe C to, and forming part of the statutory Code of Conduct for Councillors)

Managers

- Should implement and communicate the Policy and Procedures to all employees

- Should set a good example through their own behaviour so that a positive workplace culture develops
- Should be aware that harassment and bullying takes many forms and can be delivered in a variety of ways

Employees

- Should accept and understand the terms and conditions of the Policy and Procedures
- Should ensure that harassment and bullying does not take place within the workplace
- Should be aware that they carry a personal responsibility for their own behaviour

Human Resources

- Will provide advice and support as necessary
- Will provide appropriate training as necessary
- Will maintain, review and update the Policy and Procedures as necessary

4. DEFINITIONS

4.1 Generally, Harassment is defined as unwanted, unwarranted and uninvited conduct affecting the dignity of employees at work. It includes unwelcome verbal, non-verbal and physical conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading and humiliating environment that could amount to unlawful discrimination.

4.2 Discrimination is defined as treating someone less favourably based on an individual's personal characteristic(s) such as race, ethnic or national origin, nationality or skin colour; religion or belief; disability; age; health; gender; physical characteristics; sexuality; employment status; address; offending background; marital or family status; responsibility for dependants; trade union activity or political affiliation or be disadvantaged by conditions or requirements which cannot be shown to be justifiable.

4.3 There is no one definition of bullying. The ACAS definition of bullying is;

“Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient” (source ACAS).

However, bullying is generally seen as a sustained form of psychological abuse, where the bully embarks on a course of aggressive and abusive behaviour with the aim of gradually wearing the victim down so that they feel demeaned or inadequate. One incident may constitute bullying if it is sufficiently serious.

4.4 The acts of harassment and bullying are not mutually exclusive; bullying and harassment can take place simultaneously or independently.

5. HARASSMENT

5.1 Harassment can take a wide variety of forms to include crude language, inappropriate comments, unwanted physical contact, display of pornographic material, threatening behaviour and coercion.

Harassment can occur in the following examples:

- verbal and written forms of harassment including: crude language; offensive jokes; expression of racist/sexist/homophobic or similarly offensive view; pranks; uneducated stereotyping; suggestive remarks; innuendoes; lewd comments; wolf-whistles; gossip; offensive letters; offensive songs and various forms of offensive, threatening or demeaning electronic/mobile communications;
- Physical contact ranging from unnecessary touching, patting, pinching or brushing against another employee's body, to assault and physical coercion;
- Display of posters or pornographic material, obscene gestures, graffiti and offensive objects;
- Coercion ranging from pressure for sexual favours to pressure to participate in political, religious or trade union groups etc; and
- Intrusion by leering, following, pestering, spying, voice mail messaging etc.

Such examples are illustrative but are by no means an exhaustive list. In summary any acts which result in the employee feeling distressed, alarmed, fearful or uncomfortable may be viewed as harassment.

5.2 Harassment is normally characterised by more than one incident of unacceptable behaviour particularly if it recurs once it has been made clear that it is regarded by the recipient as offensive. However, one incident may constitute harassment if it is sufficiently serious. Each employee acting reasonably is free to decide whether the unwelcome behaviour they have experienced is acceptable or unacceptable. Silence is not necessarily acceptance of one individual's behaviour towards another.

6. BULLYING

6.1 Bullying is increasingly recognised as a serious management issue which is largely unreported as it is seen as complex and often difficult to describe by those affected by it. Bullying can manifest itself into a number of forms:

- (i) managers and supervisors abusing or misusing their powers;

- (ii) Between employees in the workplace; and
- (iii) Between employees working in partnership with other employees in different departments and organisations.

6.2 Workplace bullying can range from extreme forms such as violence and intimidation to the less obvious or subtle actions, like deliberately ignoring someone at work.

Examples of obvious forms of bullying are:

- shouting or swearing at people in public or in private
- persistent criticism
- ignoring or deliberately excluding people
- persecution through threats and instilling fear
- spreading malicious rumours
- constantly undervaluing effort
- dispensing disciplinary action which is totally unjustified
- spontaneous rages, often over trivial matters

Examples of actions which may amount to less obvious forms of bullying are:

- withholding information or supplying incorrect information
- deliberately sabotaging or impeding work performance
- constantly changing targets
- setting individuals up to fail by imposing impossible deadlines
- levelling unfair criticism about performance
- removing areas of responsibility and imposing menial tasks
- blocking applications for holiday, promotion or training.

These examples listed are not exhaustive and the actions listed must be viewed in terms of the distress they cause to the employee.

7. PREVENTATIVE MEASURES

7.1 The Council will endeavour to do as much as possible to prevent harassment and bullying by ensuring that clear Harassment and Bullying Policies are in place, visibly supported by management and supported by training with regular reviews being undertaken. Managers will be reminded to set a good example and employees made aware of a zero-tolerance attitude towards harassment and bullying.

8. INFORMAL AND FORMAL ROUTES

8.1 The Council operates an open-door policy to discuss workplace problems and employees can fully discuss matters with their Line Manager on an informal basis. However, the Council recognises that this may not always be appropriate in all circumstances. If this is the case, employees can discuss the situation with the next level of management, their Human Resources Officer or another member of Human Resources.

8.2 There are two routes for employees to pursue, informal and formal procedures. The employee will require to be advised of the advantages and disadvantages of both routes to enable them to make a decision. Whether to follow the informal or formal procedure will depend on:

- the seriousness of the allegation and of the incident(s);
- its effect on the individual concerned;
- its potential effect if repeated;
- whether the alleged harasser is in a position of trust and responsibility;
- what message the choice of procedure will send out to other employees;
- whether the procedure has the capacity to deter a recurrence;
- whether the informal procedure would be sufficient remedy for the complainant.

8.3 Employees are strongly advised to keep a written record of any incident including time, date and place the incident occurred, a full description of what happened, the effect the behaviour has had and name(s) if known of the alleged perpetrators and any witnesses.

9. INFORMAL PROCEDURES

9.1 All employees have the right to confidential support, advice and be accompanied at any meeting, and if an employee wishes to handle the matter informally then there are a number of ways of dealing with incidents of harassment/bullying which include:

- telling the person(s) involved that the behaviour in question is offensive, unwanted and that it must stop immediately. The harassment or bullying may not be deliberate, it may be that the “bully” is not aware of the effect of their behaviour and needs to be more considerate or alternatively requires training or counselling.
- enlisting the help of a Human Resources Officer, Trade Union representative, or a work colleague for advice, assistance and support.
- reporting the matter to their Line Manager and asking them to respond informally by speaking to the alleged perpetrator.

- managers may agree that it is relevant to handle the complaint in this informal way. However, if the complainant raises a matter which is of obvious serious concern then it may be more appropriate to pursue the formal route.

10. FORMAL PROCEDURES

- 10.1** The main steps to be undertaken in the formal procedure are the initial stage; investigation stage; interim action during the investigation and evaluation of evidence and decision on outcome.
- 10.2** At all times, whether or not informal steps have been taken, any employee who feels that they, or others, have been harassed, discriminated against or bullied may raise a formal complaint using Form HB/1. In normal circumstances, they should submit it to their Executive Director for appropriate action within two weeks of the date on which the incident first arose or within two weeks of the latest date where a series of associated incidents have occurred. A copy of Form HB/1 is attached as Appendix 1.
- 10.3** The Executive Director will nominate the appropriate employees who will form the Investigating Team which may include employees from another department if considered appropriate. A minimum of two employees will form the Investigating Team which will investigate the matter.
- 10.4** Employees will be expected to attend any investigatory hearings in order to give evidence. Both the complainant and alleged harasser may be accompanied at all stages of the procedures by either a Trade Union Representative or colleague. However, the complainant will not be required to give evidence in the presence of the alleged harasser if they do not wish to do so unless they are called as a witness in any subsequent Disciplinary Hearing, if deemed appropriate.
- 10.5** The Investigating Team conducting the investigatory hearing will ensure that all proceedings are handled in a confidential, sensitive and private manner in order not to cause any further distress, although the principles of natural justice must prevail and a fair hearing must be ensured.
- 10.6** The investigation, which will include the interviewing of all named witnesses, should commence within 10 working days of receipt of a formal complaint with any subsequent investigatory hearing, where appropriate, being held as soon as possible thereafter. The investigation from commencement to submission of the report to the senior manager concerned should normally be completed within 15 days. However this timescale may be extended in more complex cases and where holiday periods occur during the process. Employees should be kept advised of the reasons for any delay beyond the 15 day period and given an indication of the timescale for completion.

- 10.7** An accurate record must be made of all aspects of the investigation, the investigatory hearing, signed witness statements and the conclusion reached. It should be noted that a witness statement can be anonymised in certain situations e.g. where the witness has legitimate concerns about their safety. On such occasions advice should be sought from Human Resources and/or Legal Services.
- 10.8** The Investigating Team will prepare a report and forward it to the Executive Director or nominated senior manager who will decide what further action is required including whether or not to proceed with a Disciplinary Hearing.
- 10.9** Where a complaint is made by an employee in respect of alleged conduct on the part of an Elected Member of the Council then this can either be reported to the relevant Executive Director in accordance with Para. 10.2 above, or it can be reported directly to the Monitoring Officer (or in his absence, either of the Depute Monitoring Officers).

In either event, any required investigation of the complaint will be carried out by the Monitoring Officer (or, where appropriate, one of the Depute Monitoring Officers) and thereafter reported to each of the political groups within the Council in accordance with current practice, with the employee also being kept appropriately informed as to both progress of the investigation and the outcome.”

11. OUTCOME

- 11.1** The objective is to resolve the complaint and there may be a range of solutions which assist this. However, whether a complaint is upheld or not, the Council recognises that it may be difficult for the employees concerned to continue to work in close proximity to one another during the investigation or following the outcome of the proceedings. If this is the case then the Council will consider a request from either party to transfer to another job or work location. However, a transfer cannot be guaranteed.
- 11.2** Any disciplinary transfers which arise from disciplinary action taken against an employee will be dealt with under the Council’s Disciplinary Policy and Procedures and Redeployment Policy and Procedures for Chief Officers, Local Government Employees and Craft Operatives. Any disciplinary action taken in respect of Teachers will be dealt with in accordance with the Council’s Disciplinary Policy and Procedures for Teachers.

12. TRAINING

- 12.1** Training is an essential component of tackling harassment and bullying and a range of training interventions including general awareness training will be available for employees. In addition, specific managerial training will also take

place, and employees who are involved in undertaking investigations into allegations of harassment or bullying will have received appropriate training, including refresher training as necessary before being appointed to the Investigating Team.

13. COMMUNICATIONS TO MANAGERS AND EMPLOYEES

- 13.1** The Harassment and Bullying Policy and Procedures will be communicated to all employees by the issuing of separate guidelines to all managers and employees. The issuing of the guidelines will enable managers and employees to be aware of the Policy and Procedures but also to familiarise themselves with the standards expected of them as employees of the Council. Copies will also be issued at corporate induction, departmental induction or at job induction, whichever is appropriate, to ensure that all new managers and employees are aware of the Policy and Procedures.
- 13.2** In addition to detailing the process, the Managers' guidelines will act as an aid to good management practice enabling managers to deal promptly with any allegations of harassment or bullying using the Council's procedures.
- 13.3** East Ayrshire Council recognises that a written Policy though essential is not sufficient to eliminate harassment and bullying. Prominent and regular communication, training and awareness is important to ensure that all employees understand the Council's commitment to prevent harassment and bullying; understand their responsibilities and role in the process; know where to seek advice and guidance; know how to make complaints and be confident that these will be handled effectively.

14. UNSUBSTANTIATED COMPLAINTS

- 14.1** If an employee, in good faith, makes a formal harassment/bullying complaint that is not supported by evidence gathered during the investigation, that complaint will be dismissed and no record will be put into the accused harasser's personal file. As long as the complaint was in good faith, there will be no penalty to the person who complained and no record in their file.

15. MALICIOUS COMPLAINTS

- 15.1** All complaints will be treated seriously but will not be accepted without investigation. Where a complaint is blatantly untrue and has been brought out of spite or for some other unacceptable motive, the complainant will be subject to the Council's Disciplinary Policy and Procedures in respect of the employee group concerned as will any witnesses who have deliberately misled the Investigating Team during its investigations.

16. TIMESCALES

- 16.1** The sooner that the harassment or bullying is dealt with, the less damage will be done and the sooner people can move on from the experience. It is therefore important that complaints are investigated as soon as practicable and in the case of formal complaints, that these commence within 10 working days of receipt of a formal complaint.
- 16.2** The investigations from commencement of investigation to submission of written report to senior manager concerned should normally be completed within 15 working days. Employees should be kept advised of the reasons for any delay beyond this period and given an indication of the timescale for completion.

17. RIGHT OF APPEAL

- 17.1** Complainants will not be able to appeal against the decision of the senior manager who has evaluated all the evidence arising from the complaint either in relation to whether or not disciplinary action was necessary or the level of any disciplinary action given to the alleged harasser/bully.
- 17.2** However, any employee affected by an allegation of harassment and bullying who has a complaint concerning the conduct of the investigation, can submit a grievance to their Executive Director.

18. RECORD KEEPING

- 18.1** It is important that accurate record keeping is maintained throughout the complaint process. All complaint records must be kept confidential in accordance with the Data Protection Act 1998.
- 18.2** At the conclusion of the complaint process all relevant documentation must be retained in the Departmental Human Resources Section for a period of 5 years from the date of the conclusion of the completed process. This information will be retained for a longer period where an employee has submitted a claim to an Employment Tribunal.
- 18.3** All documentation will be securely destroyed either by using an office shredder or by confidential waste disposal after expiry of the designated retention period in accordance with the departmental retention schedule.
- 18.4** A record of all complaints raised on a formal basis will be retained confidentially within the Department of Corporate Support (Human Resources). The content, nature and outcome of the complaint will also be summarised and used for statistical purposes and to establish patterns and consistency. **For further advice contact Human Resources.**

18.5 Any notes and correspondence relating to any disciplinary process or action will be retained for the time period outlined in the Council's Disciplinary Policy and Procedures in respect of the employee group concerned.

19. EMPLOYEE WELFARE

19.1 It is recognised that any employee who has been subject to Harassment and Bullying will wish to feel supported. Employees will be offered support and/or counselling appropriate to their needs. Employees should contact their Human Resources Officer regarding making an appointment with the Employee Counselling Service. Alternatively, employees can make a self referral to the Counselling Service on 0800 435 768. In addition, Trade Unions and Professional Associations often operate a similar service and this should not prejudice any employee from seeking assistance from either or both.

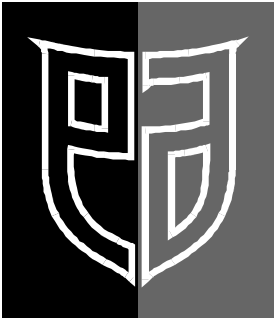
20. REVIEW

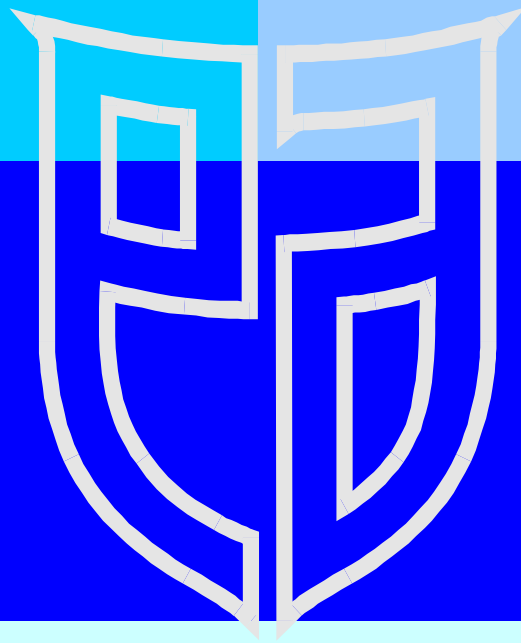
20.1 This Policy and Procedures will be reviewed on an annual basis or earlier if required following any changes in the relevant legislation or operational requirements.

Human Resources

June 2010

PER/HB/1	CONFIDENTIAL		
<p>EAST AYRSHIRE COUNCIL</p> <p>HARASSMENT AND BULLYING</p> <p>NOTIFICATION OF FORMAL COMPLAINT</p>			
<p>NOTE: If completing by hand, please do so clearly and in black ink. If you require any assistance in completing this form, please contact your Human Resources Officer or the Human Resources Service. You should also refer to the Council's Harassment and Bullying Policy and Procedures to assist you.</p>			
PERSONAL DETAILS			
Name		Department	
Designation		Grade	
Work Location		Work Phone No.	
Home Address			
REPRESENTATIVE'S DETAILS			
Name of Trade Union		Name of Trade Union (If appropriate)	
Work Colleague			
NATURE OF COMPLAINT			
Please state fully the nature of the complaint providing details of incidents which you believe constitute Harassment and Bullying. (continue overleaf and on a separate sheet if necessary)			





**DEPARTMENT OF CORPORATE SUPPORT
HUMAN RESOURCES**

MISSION STATEMENT

To provide and maintain a Quality Human

HUMAN RESOURCES

**COUNCIL HEADQUARTERS
LONDON ROAD
KILMARNOCK KA3 7BU**