



Newark Orchard School Harassment Policy & Procedure

March 2023

HR Advice, Support and Training Service

SCHOOL HARASSMENT POLICY – Table of Contents

Section	Heading	Page
1	Introduction	4
2	Advice, support and Training	5
3	Consultation and Agreement with the Recognised Trade Unions	5
4	Equalities and Equal Opportunities	6
5	Aims of the Procedure	6
6	Scope of the Harassment Procedure	7
7	Defining Harassment	8
8	Legislation	9
9	Whole School Management Issues	10
10	Monitoring and Review	11
Appendix 1	Stage One Procedures (Informal)	12
Appendix 1	Stage Two Formal	12
Appendix 1	Stage 3 - Appeal	14
Appendix 2	Flowchart for dealing with a Harassment complaint	16

SCHOOL HARRASSMENT PROCEDURE

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Please also note that any changes to the original policy documentation will require your governing body or trust to re-consult with the secretaries of the recognised trade unions and staff in your school.

Introduction

- 1.0 The Governing Body of Newark Orchard School adopted this Harassment Policy in March 2023. The SD&P Committee of the governing body will review and monitor the impact of the Harassment Policy annually with the head teacher.
- 2.0 The governing body has adopted the procedure set out in this document along with guidance and toolkit to provide an agreed framework for the exercise of its powers and discretions in relation to all staff employed in the school and paid from within the school budget.
- 1.2 The governing body understands its responsibilities and is committed to taking decisions in accordance with the principles of public life as listed in DfE guidance; objectivity, openness and accountability. Governing bodies should ensure that they are fully aware of their responsibilities under employment law in applying this procedure.
- 1.3 The governing body recognises the legal requirements placed upon them by the Education Act 2002 and subsequent legislation. This document will apply to all staff, including apprentices, supply staff and other staff directly employed by the school.

- 1.4 The governing body delegates to the SD&P Committee the responsibility for approving decisions relating to Harassment Procedure.
- 1.5 References to the governing body should be taken to refer to the entity that is responsible for exercising governance functions for a maintained school or academy, which in the case of a multi-academy trust may be the trust board. Likewise references to governors should be taken to mean whoever is responsible for fulfilling governance functions. Where maintained schools are federated under a single governing body this will be the federated governing body.
- 1.6 In fulfilling staffing responsibilities, the governing body may delegate its staffing functions in accordance with its articles of government. In delegating functions, the governing body must not lose sight of the fact that it retains overall accountability for the decisions made by those to whom the function has been delegated. As a result, the governing body should regularly review their arrangements for managing staffing functions and that the right people are fulfilling these roles on its behalf.
- 1.7 The School Staffing (England) Regulations 2009 confers the right of the County Council to send a representative to all proceedings of the governing body of a community or voluntary controlled school relating to the selection or dismissal of any teacher (including the head teacher and deputy) to offer advice. If the County Council decides to send a representative, they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision. This will usually be a senior officer from the HR Service who may also advise the governing body/head teacher as appropriate. The same rights do not automatically apply in respect of maintained foundation, voluntary-aided and foundation special schools.

Advice, support and Training

- 1.8 It is the responsibility of the head teacher to ensure that all relevant senior leaders understand their role and have access to appropriate support, advice, and training in the application of these procedures. The head teacher should also ensure, in conjunction with the chair of Governors and the training co-ordinator, where appropriate, that in discharging their duties and responsibilities, governors have access to support, advice and training as appropriate.

Consultation and Agreement with the Recognised Trade Unions

- 1.9 The Nottinghamshire School Harassment Procedure is recommended for adoption by all community, voluntary aided, voluntary controlled, academy, foundation, and trust schools who purchase their HR Service from Nottinghamshire County Council.
- 1.10 This Harassment Procedure, Guidance and Toolkit has been agreed with all of the recognised trade unions through the JCNP process and meet legislative requirements.

- 1.11 Due to the complexities of this area of employment and education law, governing bodies are strongly advised to adopt the attached policy without amendment. Should, exceptionally, a governing body seek to amend the recommended policy, they will need to consult/negotiate any changes collectively with all the secretaries of the recognised trade unions and confirm any amendments to the local authority. Governing Bodies are strongly recommended to seek advice from the HR service in these circumstances.

Equalities and Equal Opportunities

- 2.0 The governing body recognises its legal responsibilities to staff under the Equality Act 2010 and this policy will ensure equality and fairness regardless of race, sex, sexual orientation, religion or belief, gender re-assignment, pregnancy and maternity, marriage and civil partnership, disability or age. All decisions will be taken in accordance with relevant equalities legislation, the Employment Relations Act 1999, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 2.1 The governing body is aware of its responsibilities under the Freedom of Information Act 2000 to make available this policy to all staff at the school and its responsibilities to be compliant with the Data Protection Act 2018 and the General Data Protection Regulations 2018.

Aims of the Procedure

- 3.0 The purpose of this document is to provide schools with:-
- a) Background information about harassment and the relevant legislation
 - b) Guidance on the management of complaints of harassment
 - c) A harassment procedure for school staff (**Appendix 1**) which comprises:-

Informal procedures – **Stage One**

Formal procedures – **Stage Two** - (Investigation - communication of findings to all parties
- decision made regarding disciplinary action)

Stage Three - Appeal

- 3.1 Harassment in any of its forms should have no place in our schools. The onus is on the governors and school leaders to combat harassment by setting high standards of behaviour at all levels and ensuring that employees follow their lead. All employers and employees should strive to bring about a climate and culture in our schools where harassment is not tolerated. Where it does occur or exist it should be dealt with swiftly utilising the procedures in this policy.

- 3.2 The Education (School Staffing) (England) Regulations 2003 require governing bodies to establish procedures for giving members of staff the opportunity of seeking redress for any complaint relating to their employment.
- 3.3 Technically, the harassment procedure is a type of grievance procedure and the governing body must establish such procedures and make them known to staff. This policy will apply to all staff, including apprentices, supply and other temporary staff directly employed by the school. A copy of the school's adopted harassment policy and procedure should be made available to all new employees when they commence employment and be freely available to all staff.
- 3.4 Harassment is a particularly sensitive and complicated area of industrial relations and employment law. Governors acting on behalf of the LA as employer of staff in community schools, or in the case of voluntary aided schools and foundation schools as the contracted employer must take steps to prohibit discriminatory behaviour as governing bodies can be held vicariously liable for the action of their employees in school. Due to the complexities of this area of employment and education law, therefore, **governing bodies are strongly advised to adopt the attached policy and procedures without amendment** and seek advice on individual cases from the HR Service as required.
- 3.5 Should, exceptionally, a governing body seek to amend this recommended document or adopt an alternative procedure, they will need to undertake formal consultation collectively with all of the Secretaries of the recognised trade unions and confirm any amendments with the Local Authority. Governing bodies are strongly recommended to seek advice from the HR Service in these circumstances. It is recognised that some Voluntary Aided or Foundation schools may choose to adopt the procedures recommended by their Diocesan Authority or other personnel service provider. Where this is the case, the recognised trade unions should be informed.

Advice on procedural matters and counselling is available from the HR Service Team. Schools will have access to legal advice if they have bought into the service of the LA Legal Services Team.

Scope of the Harassment Procedure

- 4.0 The **Harassment Procedure** is designed to address employee complaints about the conduct of a fellow worker where bullying, harassment or some form of discriminatory behaviour may be involved which meets this threshold. The complaint of harassment will, therefore, normally be made against a named individual. A complaint may be considered via a formal investigation under the Disciplinary Procedure for School Staff
- 4.1 The **Grievance Procedure** is designed to cover employees' grievances against the decisions made or actions taken by the organisation, i.e. their school or the County Council on any matter relating to their employment. It should not, therefore be used to cover complaints which could constitute harassment e.g. bullying intimidation, unfair treatment,

discrimination or victimisation. However, an employee may have recourse to the school's grievance procedure if they believe the school has failed to properly address their harassment complaint.

Defining Harassment

- 5.0 There is no simple definition of harassment. It can take many forms and may be directed at an individual or at specific groups of people. As an employer, the County Council regards harassment as a form of misconduct which covers all unwanted action or conduct which affects the dignity of men and women at work.
- 5.1 Harassment is behaviour which has the effect of diminishing a person's position, status or esteem. It is described by ACAS as *"unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment."* It can be imposed on an individual by another on the basis of perceived differences, particularly in respect of sex, race, sexual orientation, disability or medical condition, religion, cultural or language differences, age, physical attributes or trade union or political affiliation. Such behaviour may range from physical contact such as unnecessary touching and unwelcome sexual advances through to physical abuse or assault. It can be verbal, ranging from suggestive remarks, inappropriate 'jokes' and e-mails, verbal abuse, name calling or persistent denigration. It can be non-verbal, through gestures and body language or by the display of offensive material.
- 5.2 A common feature of harassment is that it is unwanted. Whether or not the behaviour was meant to be offensive, it is the complainant's perception of the behaviour which is important and must be taken seriously. Unwelcome behaviour becomes harassment if it is repeated once it has been made clear by the recipient that it is offensive or unwanted. One incident alone may constitute harassment if it is sufficiently serious. Experience shows that for those who are harassed, the consequences can be that the individual may suffer stress, anxiety, feelings of guilt or depressive illness. It can therefore affect work performance and attendance as well as relationships within the workplace.
- 5.3 Another common feature of harassment is that it is often hidden, as incidents often occur in situations where there are no witnesses. However, the absence of direct corroboration should not in itself determine whether the matter should be formally investigated nor whether the matter should be heard by members of the governing body. If presented with such a complaint, the head teacher and governors will need to determine what action should be taken on the balance of probability, based on the evidence available to them.
- 5.4 Within the work situation, harassment may also take the form of adult bullying i.e. the unjust exercise of power of one individual over another by use of means intended to humiliate, frighten, denigrate or injure. Such means could include:-
- a) berating or reprimanding in the presence of others

- b) the setting of unreasonable work allocations or unjustified changes in such allocations
- c) the inappropriate use of discipline and competence procedures,
- d) overbearing supervision,
- e) continual and unnecessary criticism, both verbal and / or written
- f) malicious isolation.
- g) unfair application of school policies and procedures
- h) setting unreasonable or unfair deadlines
- i) scheduling meetings at unreasonable times or venues

5.5 Dictatorial and authoritarian styles of management can inhibit productive working and act as a barrier to employees reaching their full potential. It is important, therefore, for head teachers, school leadership team and schools to establish a management culture which recognises the dignity of employees and helps managers to acquire and develop the necessary interpersonal skills to carry out their responsibilities in a supportive, fair and non-threatening manner.

5.6 As it is difficult to outline and define all types of bullying action, it can be helpful to consider it in terms of its effects on an individual or group of individuals. The physical and emotional effects of bullying are very similar and common to many victims. They can include:-

- a) low self-esteem and / or lack of confidence;
- b) physical ill-health;
- c) mental distress;
- d) fear of the workplace or people in the workplace;
- e) feeling intimidated.
- f) impaired performance
- g) high absenteeism;
- h) relationship difficulties

5.7 Harassment is sometimes characterised by a series of relatively minor incidents which, in isolation, may appear trivial to an onlooker. Where such behaviour becomes frequent, repetitive or part of a recognised pattern it can have a significant impact on the recipient, affecting their morale and perceived status within the workplace.

Legislation

6.0 The Equality Act 2010 replaces previous discrimination legislation such as the Sex Discrimination Act 1975, Race Relations Act 1976 and Disability Discrimination Act 1995.

6.1 The Equality Act 2010 prohibits harassment related to age, race, sex, sexual orientation, religion and belief, gender re-assignment, disability, pregnancy or maternity and marriage or civil partnership. These are known as 'protected characteristics'.

- 6.3 It is important for Head Teachers and Governing Bodies to be familiar with these 'protected characteristics' when dealing with Harassment complaints to prevent any claim of discrimination.
- 6.4 The Equality Act 2010 has extended the law relating to harassment:
- A person may be harassed even if they were not the intended "target" and did not possess the 'relevant characteristic' themselves. For example, a person may be harassed by racist jokes about a different ethnic group if it creates an offensive environment for that person Equally, a person may be harassed if they are subjected to homophobic taunts even though they themselves are heterosexual.*
- 6.5 Employers have an implied duty to take steps to prohibit discriminatory or harassing behaviour which is detrimental to the well-being of their staff and which destroys the trust and confidence between employer and employee. In cases of harassment the employer may be held liable unless reasonable steps have been taken to prevent or discourage such action if it occurs. If reasonable steps are not taken by the Governing Body, it could be in contravention of the Equality Act.
- 6.6 In relation to discrimination law, employers can be made directly liable for unlawful discrimination by their employees. Anything which a person does in the course of their employment is treated as having been done by their employer as well as by the employee. It is now increasingly common for complainants to cite both the employer and the individual harasser as respondents. Liability applies whether or not the employer previously knew about what the employee did, or was going to do, and also regardless of whether or not the employer approved of it.
- 6.7 The other important piece of legislation to consider when dealing with Harassment Complaints is the Health and Safety at Work Act 1974, as this states that the employer must provide a healthy and safe place in which to work, or a duty otherwise to be a good employer.
- 6.8 Article 6 of the Education (Modification of Enactments Relating to Employment) Order 2003 provides for a governing body to be the respondent in relation to any application to an employment tribunal arising from a harassment complaint. In law, the Local Authority is the employer for community and voluntary controlled schools and will therefore be primarily responsible for the payment of any compensation order by an employment tribunal in respect of a finding relating to a complaint of harassment. However, where it is reasonable to do so, the Local Authority is empowered to deduct such compensation from the school's budget, where the school has failed to act reasonably or seek and follow advice. It is unlikely that the Local Authority would wish to adopt such a course of action provided that the governing body has not acted contrary to law or in some other way failed to observe their agreed procedures.

Whole School Management Issues

- 7.0 Apart from the legal requirements placed upon them, head teachers and senior managers in schools also have a responsibility to create a climate amongst staff in which mutual respect and a supportive environment are indicators of an effective management culture and where harassment of staff is regarded as an extremely serious issue. Such cultures are created not just through discussions with staff, policy statements and effective management procedures, but also through individual management style. In this context, staff in a managerial position should not use that position to harass, bully or threaten staff. Where such conduct occurs, managers must expect that the abuse of their powers will be an additional element which the Governing Body may take into account when considering any resultant disciplinary action.
- 7.1 Although this guidance concentrates, as it must, on procedures for dealing with the conduct of employees, it must be remembered that school staff are part of a wider community which comprises pupils, parents and governors together with employees of the County Council or contractors working on site. Every individual within that community has the right to be treated fairly, equally and with respect. Everyone also has a responsibility to treat other members of the community in such a manner. Such wider considerations should be incorporated within the school's equal opportunity policy which should be a matter for consultation within the community and with representatives of the trade union at local level.

Monitoring and Review

- 8.0 Where changes to this policy are proposed the governing body will undertake an Equality Impact Assessment (EQIA). The governing body will make available to staff the outcomes of the Equality Impact Assessment.
- 8.1 The governing body will monitor the outcomes and impact of this policy annually. As part of this review it that will monitor trends on progression across all groups of staff, the school's continued compliance with equalities legislation and the provisions of the STPCD, the Burgundy Book and the Green Book – NJC Conditions of Service. A document to support this review is included as Appendix 9.

Stage One Procedures (Informal)

- 9.0 Naturally, a member of staff may feel reluctant to pursue a complaint because of their vulnerability or embarrassment. It is acceptable to discuss the matter, in complete confidence, with a HR Business Partner or with a representative of a trade union. At this stage the HR Business Partner or representative will be no more than "a listening friend" to advise and support. No action will be taken without the express approval of the member of staff concerned.
- 9.1 The first step in proceeding is for the complainant to make clear to the harasser that the behaviour is unacceptable. This may be difficult and the complainant may feel the need to be accompanied by a trade union representative or a work colleague. Alternatively, the complainant may approach their trade union who may write to the individual concerned. The approach should be clear and specific about the behaviour which is offensive and ask for it to be stopped. The objective at this stage is to secure the understanding of the individual that the complainant finds the behaviour unacceptable. It may be in securing that understanding from someone who is unaware of the effect of his/her actions, the matter is resolved.
- 9.2 Alternatively, the complainant may raise the issue with the his/her head teacher, either orally or in writing, requesting that the head teacher speak to the individual involved. The complainant may be accompanied by a trade union representative or a work colleague in raising this issue quickly and providing feedback on the action taken. If the complainant decides not to proceed and the matter has been submitted to the head teacher in writing, the complainant may decide whether the letter should be retained or returned. The head teacher, however, should keep a note of the action taken, but should not take copies of the original letter, unless the individual agrees.
- 9.3 If the complainant is not satisfied by the outcome of the informal stage or if the harassment continues, the complainant is entitled to treat the harassment as intentional. The complainant is entitled to take the matter further to the next stage set out below. However, some complaints may be sufficiently serious to invoke the formal stage or immediately and advice on this is available from the school HR Business Partner and the recognised trade union.

Stage Two (Formal)

- 10.0 The first formal step to take is for the complainant to notify their Head Teacher of their wish to proceed either to a meeting or, preferably in writing. (Stage Two) The information given should include:

- a) clear, specific, allegations against named people.

- b) dates, times and witnesses provided where these are known.
- c) factual descriptions of events rather than opinions or assumptions.
- d) direct quotes if these can be remembered.
- e) a brief description of the context of each incident.
- f) an indication of how each incident made the complainant feel and the effect it had.
- g) any documentary evidence.
- h) details of any action that has already been taken.

Following receipt of all the written information from both parties which were considered at the informal stage including the written notification from the complainant escalating their concerns to the formal stage this will be considered by :

- a) The Headteacher (if they were not involved at the informal stage)
- b) A nominated governor
- c) If the complaint is about the Headteacher, then the Chair of Governors can nominate a governor

- 10.1 A meeting should take place for the Headteacher/delegated Governor to discuss the complaint. The decision and any actions/recommendations will normally be conveyed verbally to the employee at the end of the meeting or confirmed in writing to the employee. However, where complex issues are being addressed it may be necessary for the Headteacher/designated Governor to reconvene within an agreed timescale to conclude their deliberations. Once the decision has been given, it will be confirmed clearly in writing within 3 working days giving the right of appeal to the complainant if they are not satisfied with the outcome.
- 10.2 If it is not possible to resolve the complaint after considering all of the information provided, the issue becomes a management responsibility and the school's disciplinary procedure invoked. This will involve consideration of:
- a) suspension (in serious cases or where the continued presence of the individual would hamper matters this may be appropriate)
 - b) a full investigation
 - c) a subsequent decision on whether to proceed to Stage Three by placing the matter before governors in accordance with the school's disciplinary procedure.
- 10.3 The complainant should be kept fully informed of progress as the matter progresses. If the complainant needs to appear as a witness, then arrangements should be made to ensure that the person does not feel intimidated or vulnerable during the process. Advice on this is available from the HR Service.
- 10.4 At the conclusion of the process, head teachers have a responsibility to ensure proper integration of the complainant back into the workplace. This may involve discussion with staff, changed working arrangements or initial support. The prime consideration must be for

the welfare of the complainant and any reasonable request for assistance should be acceded to. In some cases, the same may apply to the alleged harasser and similar arrangements may need to be initiated to secure appropriate working relationships within school.

- 10.5 Where the alleged harasser is the head teacher, the chair of the governing body may request that the investigation and presentation of evidence to any Discipline Panel will be undertaken by a HR Business Partner from the HR Service in line with the terms set out in Services to Schools.
- 10.6 This procedure fulfils the requirements introduced under the Employment Act (Dispute Resolution) Regulations 2004 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

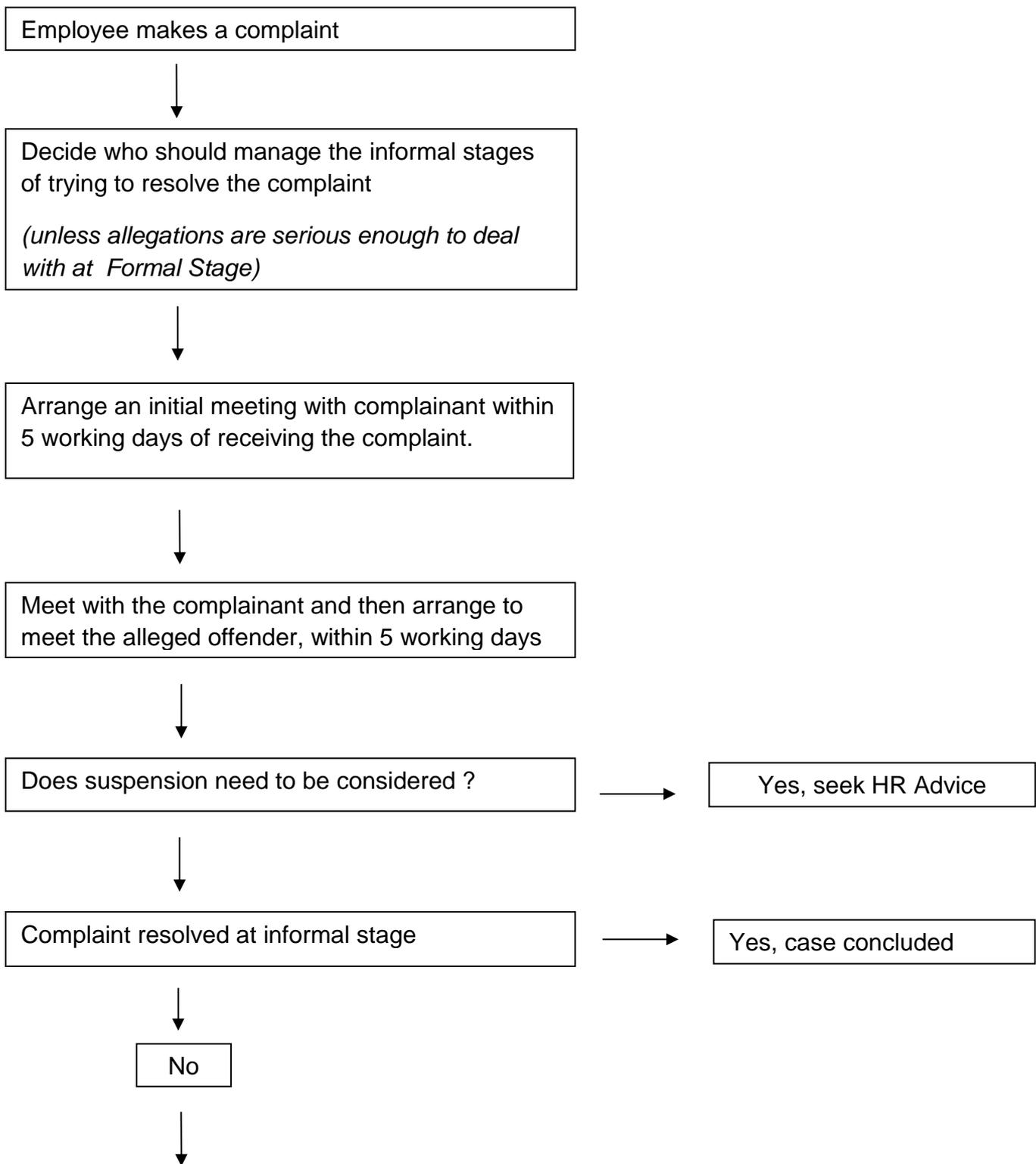
Stage 3 Appeal

- 11.0 Right of Appeal. The third and final stage of the Harassment procedure is an appeal to the Headteacher/Chair of governors. If the employee wishes to exercise their right of appeal against a decision of the Headteacher/ Governor they must notify the Headteacher or Chair of Governors of this in writing within 5 working days of receipt of the outcome letter, following Stage 2. The written notification must advise the reason why they are not satisfied with the outcomes of Stage 2 and include the grounds for an appeal.
- 11.1 Arranging the Appeal Meeting. The appeal will be heard by the Chair of governors/or delegated governor with no previous involvement with the case. The stage 2 documentation will be presented by either the Head Teacher/Governor who attended the Stage Two Meeting, against which the appeal is made. A HR Business Partner from the HR Service should be requested to advise the governor but will not be part of the panel.
- 11.2 The appeal meeting should be convened within 15 working days of the written notification of the appeal. A minimum of 10 working days' notice of the time and date of the hearing must be given. It will be important, therefore, to arrange the appeal in consultation with the complainants TU representative(s), witnesses, and HR Business Partner, to ensure their attendance as appropriate.
- 11.3 Consideration will need to be given to the location of the appeal hearing.
- 11.4 All Information relevant to the resolution of the harassment complaint, (including statements of case, written submissions, correspondence, or other papers) which either the aggrieved employee or the Head Teacher/Senior Leader/Designated Governors (who investigated the matter at Stage Two) intend to rely on at the meeting, should be circulated to all parties no later than 5 working days before the appeal hearing. These papers should include the written conclusions of the Stage Two Meeting.

- 10.5 The complainant's statement of case should reiterate the grounds for their appeal and the outcome sought at the time of the notification of appeal. It should also include written details of any witnesses to be called.
- 10.6 Advice to the delegated Governor will be available from the HR Service who will ensure that the HR Business Partner advising the governor has had no previous involvement in the case in line with the LA protocol for such meetings.
- 10.7 Procedure for the appeal meeting. The hearing will be conducted in line with the order of events shown in **Appendix 11**

Appendix 2

Flowchart for dealing with a Harassment complaint



Appendix 2 Cont.



Move to Stage 2 Formal Procedure – complainant needs to put details of their complainant in writing . The complainant will either:

- a) Be met with by the Headteacher/or delegated governor
- b) Advised that a formal investigation will be taking place under the schools Disciplinary Procedure



Consider action - Disciplinary action, management to invoke the schools Disciplinary Procedure – formal investigation.



Is there a case to answer ?



Yes



All parties given 10 working days notice of Disciplinary hearing



All parties given 10 working days' notice of Disciplinary Appeal



Formal Meeting with Headteacher/delegated Governor (Give 5 working day's notice of the meeting)



No further action, however, may include any actions/or recommendations as a result of the complaint – Employee given the right to appeal



All parties given 10 working days' notice of appeal meeting, to be heard by a delegated governor

