



LONDON FIRE BRIGADE

London Fire Brigade Headquarters
169 Union Street London SE1 0LL
T 020 8555 1200 F 020 7960 3602
Textphone 020 7960 3629
london-fire.gov.uk

Freedom of Information request reference number: 7744.1

Date of response: 14th August 2023

Request:

Please share your latest anti bullying policy. Also, I am aware you are carried out various desktop in relation to bullying and harassment allegations. Please can you tell me who has access to the CMP's concluding reports and how they can be accessed. Lastly, do you consider the process independent and transparent from beginning to end in terms of those individuals who are under scrutiny?

Response:

Please see below our Policy 0529 – Harassment Complaints and Procedure.

1. In relation to the question, *I am aware you are carried out various desktop in relation to bullying and harassment allegations. Please can you tell me who has access to the CMP's concluding reports and how they can be accessed.*

Access to the CMP historic case review (HCR) reports are restricted to:

- The LFB external complaints project team, consisting of one permanent member of the LFB HR team and 3 contractors engaged to manage the CMP helpline cases and historic case review
- One LFB Senior People Partner – for the purpose of managing the project
- LFB Head of People Operations – for the purpose of decision making
- Senior leaders such as AC – for the purpose of decision making
- The LFB Information Access (IA) team - for the purpose of responding to Subject Access Requests
- LFB Legal team – for the purpose of providing legal advice on the recommendations and responding to employment tribunal claims

In the event any of these individuals are a complainant, witness or respondent to a case, access to the report would be further restricted to exclude them.

The reports can be accessed by individuals named in the report by submitting a SAR to the LFB IA team, who would provide an appropriately redacted version of the report.

Individuals not named in the HCR report would not be given any access to the detail of the report if it were requested.

2. In relation to the question *Lastly, do you consider the process independent and transparent from beginning to end in terms of those individuals who are under scrutiny?*

The HCR is carried out by an independent external service provider and the internal process managed by external contractors. LFB employees do not have the opportunity to influence the findings or recommendations of the HCR reports and the decision makers would have to provide reasonable justification to take a decision that disagrees with CMP's recommendation. The individuals named as complainants and respondents to the case are notified of the review and informed of the outcome. Content of the reports must be kept confidential

throughout the process to avoid jeopardising any resulting investigation and to protect the individuals named in the cases.

We have dealt with your request under the Freedom of Information Act 2000. For more information about this process please see the guidance we publish about making a request [on our website](#).

Harassment complaints procedure

New policy number: **529**
Old instruction number: **PER:R005:a3**
Issue date: **1 October 2007**
Reviewed as current: **27 November 2018**
Owner: **Assistant Director, People Services**
Responsible work team: **Culture and Organisational Development**

Contents

1 Introduction 2
2 Definition of harassment 2
3 Guidance to staff 2
4 Procedure for dealing with harassment complaints – local informal action 3
5 Procedure for dealing with serious harassment complaints – formal action 4
6 Time limits 6
7 Counter complaints 6
8 Harassment by members of the public 6
9 Record keeping 7
Appendix 1 - Guidance for managers 8
Appendix 2 - Guidance for complainants 11
Appendix 3 - Guidance on the balance of probabilities 13
Appendix 4 - Guidance for the presiding manager at a discipline hearing 14
Appendix 5 - Informal resolution - interviewing skills 15
Appendix 6 – Guidance on false, spurious and vexatious complaints 16
Appendix 7 – HCP case management flowchart 17
Document history 18

Review date: **28 November 2021** Last amended date: **17 July 2023**

1 Introduction

- 1.1 We all have a responsibility to help create a safe and supportive working environment and this includes behaving in a responsible manner in dealings with others.
- 1.2 The Brigade expects all staff to treat each other with respect. Everyone who works for the Brigade shall conduct themselves in a professional manner that does not violate the dignity of others.
- 1.3 Where lack of respect or disregard for the dignity of others amounts to harassment, then the matter will be dealt with in accordance with the requirements of this policy.
- 1.4 It is the aim of this policy to create an environment where colleagues work together with mutual respect and where necessary to assist managers to respond to harassment complaints effectively.

2 Definition of harassment

- 2.1 The Brigade has adopted the following definition of harassment:

Harassment is unwanted conduct, which has the purpose or effect of:

- Violating a person's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment.

- 2.2 Harassment also includes any unwanted conduct of a sexual nature.

- 2.3 In deciding if the conduct has any of the above effects regard will be given to:

- The person's perception;
- the other circumstances of the case; and
- whether it is reasonable for the conduct to have that effect.

- 2.4 This policy will usually only apply where there is an element of repetition in an on-going working relationship, where the people involved work together on a daily or frequent basis. Staff can be from different teams, stations or watches as long as their work is likely to bring them into frequent contact.

- 2.5 Not every encounter between two members of staff which causes one of them to take offence necessarily constitutes harassment. If it involves misconduct, it should be dealt with as misconduct and not harassment and the guidance in the Brigade's discipline procedure (policy number 392a and policy number 392b and disciplinary rules – policy number 481) should be followed.

3 Guidance to staff

- 3.1 Staff who consider themselves to be subject to harassment should bring the matter to the attention of their manager as quickly as possible. If the manager is the source of the alleged harassment, the matter should be reported to another manager or the inclusion manager.

Examples of harassment

- 3.2 By way of illustration some examples, repeated incidents of which could be regarded as harassment, are listed below:
 - Insulting someone.
 - Spreading malicious rumours, making offensive jokes, insinuations, taunts or derogatory comments.
 - Ridiculing or demeaning someone.

- Exclusion from work or work related social activities.
- Unwelcome sexual advances.
- Display of offensive materials.
- Making threats/comments about job security without foundation.

3.3 What should also be borne in mind is behaviour that might constitute harassment which is not directed at a specific person, such as (but not limited to):

- Constant use of swear words.
- Making disparaging general comments about different groups in society.
- Offensive comments on social media.

3.4 Firm and fair management should not be viewed as harassment. The list below, although not exhaustive, would not normally be considered as harassment of a member of staff:

- When required to work to a deadline, and that deadline is appropriate to the task and is explained to the employee.
- When required to undertake duties appropriate to the employee's grade, ability and duties.
- When alternative duties are allocated commensurate with the employee's role, and/or occur on an ad hoc basis for which the employee is competent and/or qualified.
- When bringing to notice shortcomings in work performance or conduct provided it is done using moderate language and in private.

3.5 Where a manager is taking action under a Brigade policy or procedure, for example the discipline procedure or attendance management policy, this will not be deemed to be harassment. Any concerns regarding the use of that policy should be raised within the procedure concerned or as a grievance.

False, spurious or vexatious complaints

3.6 A member of staff who makes a complaint under the harassment complaints policy should be aware that if they knowingly make a false, spurious or vexatious complaint then disciplinary action may be taken against them.

4 Procedure for dealing with harassment complaints – local informal action

4.1 Unless the matter is considered serious enough to merit formal disciplinary action, it will be dealt with locally and informally in accordance with the requirements of this policy without recourse to a managerial or discipline investigation.

4.2 If a manager considers the complaint to be of a serious nature, that is one which if substantiated might warrant a formal discipline hearing, the complaint will be forwarded to their group commander/FRS F or above (see section 5).

4.3 Once a manager has had a preliminary discussion with both parties, and is again satisfied the complaint does not merit formal disciplinary action, then in order to minimise stress and avoid polarising positions, the manager is required resolve the harassment complaint quickly. For these purposes quickly means in a matter of days not weeks.

Interview notes

4.4 Where the manager finds shortcomings in the conduct of either or both parties, the manager will address those shortcomings and record a summary of the key findings and a rationale for their

decisions. Contemporaneous interview notes are not necessarily required, however notes should be written up as soon as possible after the meeting and the note agreed with the interviewee.

- 4.5 Before coming to a decision, the manager will consult their immediate line manager. After doing so they will implement one or more of the following resolutions, if the conduct of either or both parties is found wanting:
- Words of advice for one or both parties.
 - A letter addressing shortcomings and requiring improvement.
 - Development action or training.
- 4.6 Where there remains dissatisfaction from either party, the manager should aim to reconcile them to the outcome. If they remain dissatisfied thereafter, they should be referred to the head of HR advice and employee relations. Then if the matter cannot be resolved to the satisfaction of the party concerned, they are entitled to raise a grievance.

Parties from different watches/teams/departments

- 4.7 When the complainant and accused person are from different watches, fire stations, teams or departments, the manager of the person accused will be responsible for dealing with the complaint in consultation with the manager of the complainant. If the two managers are unable to agree on the course of action for informal resolution the matter will be referred to the next line manager of the person accused, for decision.
- 4.8 Both the complainant and the accused person may have a support person with them when they are interviewed during the course of a local informal resolution (see paragraph 5.7).

5 Procedure for dealing with serious harassment complaints – formal action

Role of the commissioning manager

- 5.1 If a manager considers the complaint to be of a serious nature, that is, if substantiated, one which might warrant a formal discipline hearing, the complaint will be forwarded to their group commander/FRS F or above. That manager will be known as the commissioning manager. Before coming to a decision whether or not to require a discipline investigation the commissioning manager will consider whether, if substantiated, the conduct complained about would amount to misconduct which would merit at least stage I disciplinary action. If not, the complaint will be referred back for local informal management resolution.
- 5.2 Before deciding on a formal investigation the commissioning manager will consult the head of HR advice and employee relations.
- 5.3 The commissioning manager will be responsible for appointing an investigator, who will be of at least station commander/FRS E grade to undertake the investigation.
- 5.4 The Brigade has staff who are specialist harassment investigators who can be requested from the head of HR advice and employee relations. It is advisable to use one of these investigators for particularly sensitive or complex investigations.
- 5.5 When there is to be an investigation and where the complainant and accused person work together, the commissioning manager will seek advice on whether at least one of the parties should be required to work elsewhere on a temporary basis.

Contact person

- 5.6 The commissioning manager will appoint one person, in addition to the investigator, as the contact person for both the complainant and the accused person. The contact person will be responsible for responding to any concerns or questions they may have regarding the investigation.

Support person

- 5.7 The investigator will advise both parties that they are entitled to be accompanied by a support person, who must be a Brigade employee or a union representative, when being interviewed or attending other meetings during the course of the investigation. The support person may be released from work in order to attend the interview, subject to the exigencies of the service. It is the responsibility of the complainant and accused person to find a support person and ensure they are available. If, however they are unable to do so, the commissioning manager will ensure one is found for them. The investigation should not be unduly delayed because of the unavailability of the support person.
- 5.8 The investigator will also advise both parties which manager is acting as the commissioning manager. If either party has reservations about the impartiality of the commissioning manager or investigator they must raise them with the head of HR advice and employee relations. Having listened to their representations on the matter the head of HR advice and employee relations will consider whether to appoint another commissioning manager or investigator. Likewise, if the commissioning manager or investigator does not consider they are the appropriate person, another commissioning manager or investigator will be appointed.
- 5.9 Once the commissioning manager has received the investigator's report and is satisfied that all reasonable enquiries have been carried out, they will make a decision as to whether the complaint is substantiated or not, in whole or in part, and will notify the complainant and accused person accordingly in writing.
- 5.10 Where the complaint is substantiated in whole or in part the commissioning manager, bearing in mind the seriousness of the matter, will have three courses of action available:
- Institute a discipline hearing at stage I;
 - recommend to the discipline manager a discipline hearing at stage II or stage III;
 - if a stage 1 is not merited, refer back for local management (informal) action.
- 5.11 Before deciding if to authorise a discipline hearing at stage II or III, the discipline manager will consult the strategic advisor to the Commissioner.
- 5.12 At the conclusion of any discipline hearing the presiding manager will notify the complainant of the outcome in writing but will not disclose details of any disciplinary award.

Grievance arising from the investigation

- 5.13 If either party raises concerns about the manner in which the complaint has been dealt with, including the conduct of the investigation, they may raise their concerns with the head of HR advice and employee relations.
- 5.14 If the head of HR advice and employee relations considers there is reasonable basis for those concerns they will raise the matter with the commissioning manager or the discipline manager as appropriate, in order to seek a satisfactory resolution.
- 5.15 If the matter cannot be resolved to the satisfaction of the party concerned, that party is entitled to lodge a grievance.

6 Time limits

- 6.1 In the interests of fairness to all concerned, a manager dealing with a complaint of harassment which is suitable for informal local resolution will not consider allegations in which the behaviour complained of ended more than three months before the complaint was made, unless the manager is satisfied that there are good reasons for the delay or the matter is serious.
- 6.2 When either the complainant or accused person are on prolonged sick leave, provided clearance from Occupational Health is given first, contact may then be made to see if they are willing to be interviewed before they return to work.
- 6.3 The complaint falls if the complainant declines to be interviewed without good reason, within one month from the date of their complaint.

7 Counter complaints

- 7.1 Where the accused person makes a counter complaint of harassment against the complainant which arises from the same incident or series of incidents, the conduct of the complainant will also be considered in the same investigation.
- 7.2 Where the counter complaint is about a separate matter, the counter complaint will be addressed separately by a different investigator. Both the accused person and the complainant will be advised accordingly.

8 Harassment by members of the public

- 8.1 Managers will do all they can to protect staff from harassment by members of the public, where that harassment arises as a consequence of the member of staff doing their duty. Where a member of staff has occasion to complain about such harassment, the manager will ensure that a detailed written record is made of the incident. Consideration will be given to reporting the matter to the police for whatever action they see fit to take. Reports to the police will be made by a manager of at least station commander/FRS E grade.
- 8.2 Should any member of staff have occasion to come into pre-arranged contact with the accused member of the public, the manager will ensure that the member of staff is accompanied and will also take any other safety measures as considered necessary.

Cross-employer complaints

- 8.3 Where either the complainant or the accused person is on secondment from or to the Brigade, reference will be made to the secondment contract which should stipulate which employer will deal with personnel management matters.
- 8.4 Where the secondment contract does not address the issue and in all other cases the following will apply. Where the complainant is a Brigade employee and the other party is not, the Brigade will offer to investigate the complaint. If the accused person's employer agrees, the Brigade will conduct a local informal resolution or formal investigation as appropriate. If the complaint is found to be substantiated, the matter will be referred back to the accused person's employer for such action as they see fit to take.
- 8.5 Where the accused person is a Brigade employee the Brigade will investigate the complaint and will seek agreement with the complainant's employer as to how the local informal resolution or formal investigation will be progressed. The complainant's employer will be advised of the outcome and will be forwarded any recommendations that may apply to the complainant.

8.6 In all such cross employer cases, the head of HR advice and employee relations will be consulted before the complaint is progressed.

9 Record keeping

9.1 Reports and associated paperwork concerning harassment complaints which are subject to local informal resolution and those dealt with at stage I will be forwarded to the head of HR advice and employee relations when the matter is concluded.

9.2 Reports and associated paperwork which lead to or relate to a discipline hearing at stages II or III will be retained by the discipline manager.

Appendix 1 - Guidance for managers

Conduct which may constitute harassment

1. This policy adopts the following definition of harassment:
Harassment is unwanted conduct, which has the purpose or effect of:
 - Violating a person's dignity; or
 - creating an intimidating, hostile, degrading, humiliating or offensive environment.
2. Harassment also includes any unwanted conduct of a sexual nature.
3. Before deciding if the conduct is harassment consideration will be given to:
 - The perception of the person, whether they thought and felt they were being harassed.
 - The other circumstances of the case.
 - Whether it is reasonable for the conduct to have that effect.
4. You will be aware of the more familiar types of conduct which may constitute harassment when directed specifically at another person:
 - Aggressive shouting.
 - Ridiculing comments.
 - Malicious gossip.
 - Offensive comments.
 - Exclusion.
 - Making fun of the other person.
5. What you should also bear in mind is behaviour that might constitute harassment which is not directed at a specific person, such as:
 - Constant use of swear words.
 - Sexually explicit language.
 - Intentional belching or breaking wind.
 - Making disparaging general comments about different groups in society.
 - Showing others sexually explicit images.
 - Offensive comments on social media.
6. Deciding if conduct constitutes harassment becomes more difficult when the conduct cannot readily be given one of the above, or some similar labels. In such cases a useful way to judge whether conduct amounts to harassment is to simply ask yourself the following questions:
 - Is this a suitable or proper way for an employee to conduct themselves in the workplace?
 - If the answer is no, has someone found the conduct of that employee to be intimidating, hostile, degrading, humiliating, offensive or a violation of their dignity?
 - If the answer to that is yes, is it reasonable for them to think and feel the way they do about the action of the employee?
 - If the answer is yes, then you may have harassment.
7. Finally, you may have to bear in mind the context:
 - You may not be offended by swearing, but some people are.
 - You may not be fazed when someone shouts at you in a hostile manner, but some people will be.
 - You may not be particularly upset by someone passing a disparaging remark about your work, but some people might be mortified.

8. The question you should ask yourself is, having regard to all the circumstances, was it reasonable for the conduct to have had the effect on the complainant.
9. The manner adopted at a critical time at an operational incident may be different to that used at a return to work interview.
10. A person may well feel intimidated or humiliated when their manager points out the errors of their ways in a firm but considered manner, but given the context this is not harassment. The manager is merely doing what is expected of them.
11. In most cases the judgement you have to make about whether the conduct is harassment is straightforward. But in some cases it is more problematic and you are advised to talk it through with your manager, the inclusion manager or a human resources and development adviser, to help you come to a view.

One off incidents

12. The harassment complaints policy will usually only apply where there is an element of repetition in an on going working relationship, where the people involved work together on a daily or at least frequent basis.
13. When a member of staff reports to you that they want to make a complaint of harassment, but what is actually involved is a one-off encounter with another member of staff, it should be dealt with as a report of possible misconduct and not dealt with as harassment.
14. Unless the one-off incident is serious, it should be dealt with in accordance with the pre-procedural guidance in the discipline procedure (discipline procedure – appendix 1 paragraph 4 – informal stage), which reads in part:
 - ".....The informal approach means that minor problems should be dealt with quickly and confidently. The line manager will speak to the member of staff about their conduct.... and may put this in writing....."
15. Before you get to that stage, it is necessary to get a full picture of what happened. When you speak to the complainant and the person they accuse, they will usually both be able to recall with clarity, if not accurately, what the other person did and said. What people find more difficult in such situations is to recall what they did and said. This you need to explore with them.
16. If you are met with different recollections of what took place, which is frequently the case, it is your job to make your mind up as to whose account is likely to be the more accurate and move to the resolution you consider most appropriate (see balance of probabilities – appendix 3).

Your response to a harassment complaint

17. If a member of staff complains about a series of incidents then you need to deal with it as a harassment complaint.
18. Remember, they may not use the word harassment. They may call it bullying, victimisation, or use an expression such as being "picked on" or "dug out."
19. It is for you, not them, to decide if the complaint is about harassment or not. This is not always easy and if in doubt, talk it through at this early stage with your line manager, or the inclusion manager.
20. Ask the complainant to put their complaint in writing. If their complaint is about remarks/comments, tell them to write down the precise words used to the best of their ability.

Once you have their complaint in writing then ask them any questions that might be necessary to clarify matters. Make sure you have a good understanding of what their complaint is about.

21. Do not consider allegations in which the behaviour complained of ended more than three months before the complaint was made unless you are satisfied that there are good reasons for the delay or unless the allegations are serious.
22. You must then decide whether it is a matter you can deal with yourself, or a matter that should be referred for a formal investigation.
23. To help you come to this decision consider what the likely outcome would be if the complaint is substantiated. If the likely outcome would be words of advice for the person accused, a letter warning them as to their future conduct or a personal development plan, then this is a matter you should deal with locally. You should inform your station commander/line manager of FRS E grade or above of how you plan to manage the complaint. If the likely outcome would be a discipline hearing then the complaint will be referred to a group commander/FRS F or above via your line management.

Appendix 2 - Guidance for complainants

- 1 Few people relish the idea of making a complaint of harassment. If you believe you are experiencing harassment you can always find reasons for not reporting it, but perhaps the question you should ask yourself is, are you prepared to go on putting up with it? If the answer is no, then you should consider making a complaint. The chances are once you've complained, irrespective of the outcome, the harassment will come to an end. Sometimes it is not an easy thing to do, but you don't have to do it alone.
- 2 To begin with you might want to talk through your concerns with the inclusion manager, a human resources and development adviser, or a union representative who is experienced in dealing with cases of harassment.
- 3 Your manager will want you to put your complaint in writing before they can address it. If necessary, ask a work colleague or trade union representative to help you draft your complaint before you submit it. Confine your complaint to matters within the last three months. Matters earlier than that will not be considered, unless they are serious.
- 4 Describe the harassing behaviour. Write down any comments and remarks made using the exact words to the best of your recollection. Describe what you were doing and saying at the time. Include how the behaviour has made you think and feel and the effect it has had on you, including any effect it may have had on your health. If you have a view about the outcome you seek, include that also. Please bear in mind that your managers will take your view into account but are not bound by it. Submit your complaint to your line manager, or if your line manager is the subject of your complaint submit your report to their line manager.
- 5 You might then be asked to attend an initial interview. The purpose of this is to clarify any of the matters raised so that the manager has a good understanding of your complaint and how it has made you think and feel. They will also explain what will happen next.
- 6 Normally your initial interview will be with a line manager of at least station officer or FRS C grade. But if you don't feel comfortable being interviewed by them you can ask for another manager to interview you. You might feel more comfortable being interviewed by a manager of the same gender or ethnicity as you. Alternatively, you can elect to be interviewed initially by a human resources and development adviser, or one of the LFB specialist harassment investigators (contact via the head of HR advice and employee relations). Remember this is just an initial interview designed to clarify your complaint and to make sure you understand what happens next. You may have a support person with you at this meeting. They must be an employee of the Brigade or a union representative who is employed by the Brigade. The meeting will not be unduly delayed if your support person is not available.
- 7 It is your manager's responsibility to make every effort to deal with your complaint efficiently and effectively and to take all reasonable practical steps to create an environment where you are comfortable and free from harassment. However, if your manager cannot bring the matter to a speedy conclusion because of the seriousness of the matter or its complexity they will forward your complaint to a group commander or FRS F or above, known as the commissioning manager, who will decide whether to start a discipline investigation.
- 8 As the complainant, if you are interviewed in the course of a discipline investigation, you are again entitled to be accompanied by a support person. The support person must be a work colleague or union representative who is an employee of the Brigade. It is your responsibility to ensure that your support person is available to attend any pre-arranged interview. If for some reason your support person is unable to attend at an agreed time and location management can still require the interview to take place.

- 9 You can expect your complaint to be dealt with in a number of days unless it is subject to a formal investigation, in which case it could take several weeks and in some cases months to resolve. In these circumstances an investigator and a separate contact person will be appointed. At some stage the investigator may need to interview you again. The wait can be stressful. If you want to know about progress of the investigation or you have any other questions about it, you are required to put them to the contact person, not the investigator. If the harassment has significantly affected your well-being or peace of mind you may want to consider contacting the LFB Counselling and Trauma Service.
- 10 If your complaint is subject of the formal investigation, the chances are that the person you complain about, or possibly you, may be moved to other duties, while the investigation takes place. If your complaint is about your manager, it could well be that you will be moved, because as well as dealing with your complaint the Brigade has to ensure the continued effective running of your watch/team/department.
- 11 When the investigation is completed you will be told the outcome in writing. You will be told your complaint is upheld in whole or in part, or that your complaint is not upheld. You will not necessarily be told what action will be taken regarding the accused person. You may also be given words of advice if it is considered you have contributed in some way to the grounds of complaint.
- 12 If there is a formal investigation you are entitled to a copy of your interview notes and any statement or documents which you provide. If you wish to see any other documentation you must make an information access request to the head of information management (see policy number 351).
- 13 In the event that you are required to give evidence at a discipline hearing, the presiding manager will ensure that you are not subject to any questions put in an aggressive, persistent or overbearing manner and that any questions are restricted to matters directly related to the discipline charge the accused person faces. At the hearing you and the accused person will be assigned separate waiting areas.
- 14 In due course you will be notified in writing of the decision by the presiding manager. The decision will be either that there is sufficient evidence to substantiate the charge of misconduct on the part of the accused person, or that there is insufficient evidence to substantiate the charge. You are not entitled to know the details of any discipline award.

Appendix 3 - Guidance on the balance of probabilities

- 1 Managers tasked with investigating complaints of harassment, commissioning managers who receive the investigator's report, and presiding managers at discipline hearings, all have to apply their minds to the balance of probabilities.
- 2 Bearing in mind the evidence, was it more likely that the events claimed occurred than not? When making this judgement you are entitled to consider that the more serious the allegation and the potential sanction the higher the burden of proof, and so the evidence needs to be stronger before you might determine that the allegation is true on the balance of probabilities.
- 3 This Employment Tribunal remark provides an illustration: "*It would need more cogent evidence to satisfy a judge that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability, that it was an Alsatian.*" (Lord Hoffman – *Secretary of State for the Home Department v Rehman (2001)*)".
- 4 Unlike other disciplinary cases, with harassment cases you will more often than not have to make your mind up, relying heavily on oral evidence from those who were present when the alleged events took place. It may be just one person's word against another's. You have to make your mind up whom you believe, but in doing so you can take account of any contemporaneous documentation, circumstantial evidence tending to support one account rather than another, and your overall impression of the character and motivation of the complainant, the accused person and any witnesses. You should explain in your decision notes the reasons why you have accepted one person's evidence in preference to another's on any significant point.
- 5 You are not obliged to disclose your reasoning to either the complainant or the accused person. However, in the case of the complainant, in some circumstances it may be beneficial to do so, if it might help to reconcile them to the outcome when the outcome is that there is insufficient evidence to substantiate their allegation.

Appendix 4 - Guidance for the presiding manager at a discipline hearing

- 1 This advice is for managers required to hold a misconduct discipline hearing where the accusation faced by the accused person has its basis in harassment of another member of staff.
- 2 Unlike other misconduct hearings, such as those relating to convictions for criminal offences, drugs, falsification of training or equipment check records, lateness and so on, those involving harassment are invariably based on evidence from a work colleague (the complainant), and if there are witnesses these will be other work colleagues.
- 3 Allegations frequently turn on competing recollections of things said and done many months before and frequently the accused person has many more witnesses to corroborate their recollection of events than does the complainant.
- 4 The accused person is usually represented by a union and in the more serious cases a union representative experienced in advocacy who will seek to cross examine the complainant.
- 5 The complainant, who at the hearing has the status of a witness for the Brigade, has no representative, or advocate who can cross examine the person they have accused of harassing them.
- 6 In these circumstances particular thought needs to be given to the arrangements for the hearing. You should consider whether arrangements should be made for separate entrance/exit from the building for the complainant and the accused person and whether the accused person and complainant should be provided with separate waiting rooms.
- 7 You should meet with the accused person and the complainant separately before the hearing, and run through the arrangements for the day. This provides an opportunity to allay any unwarranted concerns that they may have.
- 8 During the hearing you should ensure that neither the accused person nor the complainant are subject to any questions put in an aggressive, persistent or overbearing manner and that any questions are restricted to matters directly related to the discipline charge. This is especially important in cases of sexual harassment. You should consider allowing the complainant's support person to sit with them when they give evidence.
- 9 Please note that you are required to notify the complainant of the outcome of the hearing in writing, to the effect that either you found there to be sufficient evidence to substantiate the accusation of misconduct in whole, or in part, or you found that there was insufficient evidence to substantiate the allegation of misconduct.

Appendix 5 - Informal resolution - interviewing skills

- 1 Remember, as a manager, you are not concerned simply with establishing guilt or innocence. Your task will be to resolve the complaint to the satisfaction of the complainant, and if the conduct of the accused person is found wanting, in a manner that the complainant is at least reconciled to, and that is compatible with the requirements of the harassment complaints policy. To achieve this, you need the active participation and co-operation of all the parties involved.
- 2 Enquiring into a complaint of harassment requires a degree of sensitivity on your part. You are dealing not only with people's differing recollections of the facts, but also with the feelings they evoke.
- 3 More than with most management issues, you may have to cope with emotions such as fear, anxiety, anger, frustration and confusion. These emotions may be experienced by the complainant, the accused person and, once you begin to deal with the complaint, by you.
- 4 In all types of investigation, a manager should be seen to be impartial throughout the process. Make sure you suspend judgement and keep your thoughts to yourself. Wait until you have interviewed the complainant, witnesses, sought advice, interviewed the accused person and established all the facts you can, before coming to any conclusions.
- 5 Unless unavoidable or necessary, do not spring an interview on those involved. Give them sufficient notice to be prepared. However, if someone wants to see you without prior notice, endeavour to see them straight away. If the incident which gave rise to the complaint has just happened, do what you have to do to quell the situation. But if possible interview those involved the following day, so that they have time to calm down and can engage with you in a more reflective and productive manner.
- 6 At the interview there are a number of things to bear in mind that to ensure a successful outcome:
 - Remember that much communication is non-verbal, and be careful that your body language does not convey the impression you are being judgmental or dismissive.
 - It is important from the very outset, and throughout the procedure, that you build the trust of those you interview, in your ability to deal with the complaint fairly and effectively.
 - When you interview the complainant or the accused person, show you acknowledge how they may be feeling, and if necessary criticize behaviour and not the person.
 - Do not be tempted to offer a well intentioned but misguided explanation to the complainant, simply because you want to allay the complainant's anxiety.
 - When seeking to bring about an informal resolution of a complaint, make sure those people you interview do not confuse the idea of informal resolution with informality. You are not engaged in a series of informal chats. The matter is serious and follows a procedure.
 - Bear in mind you are not conducting an interrogation. Simply ask questions, firmly but fairly, and note the reply either at the time or immediately following the interview.
 - Give the interviewee the opportunity to tell their story before you ask more specific questions.
 - Keep control of the interview. You are there primarily to ask questions, not to answer them.
 - Remember that you are not a counsellor. If the interviewee shows extreme distress or presents problems you are not equipped to deal with, suggest referral to the Counselling and Trauma Service.
 - Do not be prevented from establishing exactly what was said or done out of concern for the feelings of the interviewee, or your own embarrassment. Record the precise words used, as best the interviewee can recall them. If words said involve obscenities, which may cause particular embarrassment, then ask for the words to be written down.
 - At the end of every interview, ask the interviewee if there is anything more they wish to say and check that they understand what will happen next.

Appendix 6 – Guidance on false, spurious and vexatious complaints

- 1 The terms *false*, *spurious* and *vexatious* are explained in the context of harassment complaints as follows :

False

- 2 This simply means claiming facts that the complainant knows to be false.

Spurious

- 3 For a complaint to be considered spurious it would need to be established that the complainant did not really think and feel that the conduct of the accused person has created for the complainant a working environment which is intimidating, hostile, degrading, humiliating or offensive, that this is not really their state of mind.
- 4 The term *working environment* requires that the above adverse state of mind continues through time.
- 5 Where the complainant is driven solely by other thoughts and feelings of anger, annoyance, indignation or frustration at the conduct or actions of the accused person, they may have grounds for complaint and possibly grounds for a grievance, but being angered by another's actions does not constitute harassment.
- 6 When it comes to the second leg of the harassment definition, that of *violating dignity*, in many ways this is more straightforward to assess. For the purposes of this policy violating dignity means treating another in a disrespectful or offensive way.
- 7 For the complaint of violating dignity to be considered spurious it would need to be established that the complainant did not really believe the conduct of the accused person was disrespectful or offensive.

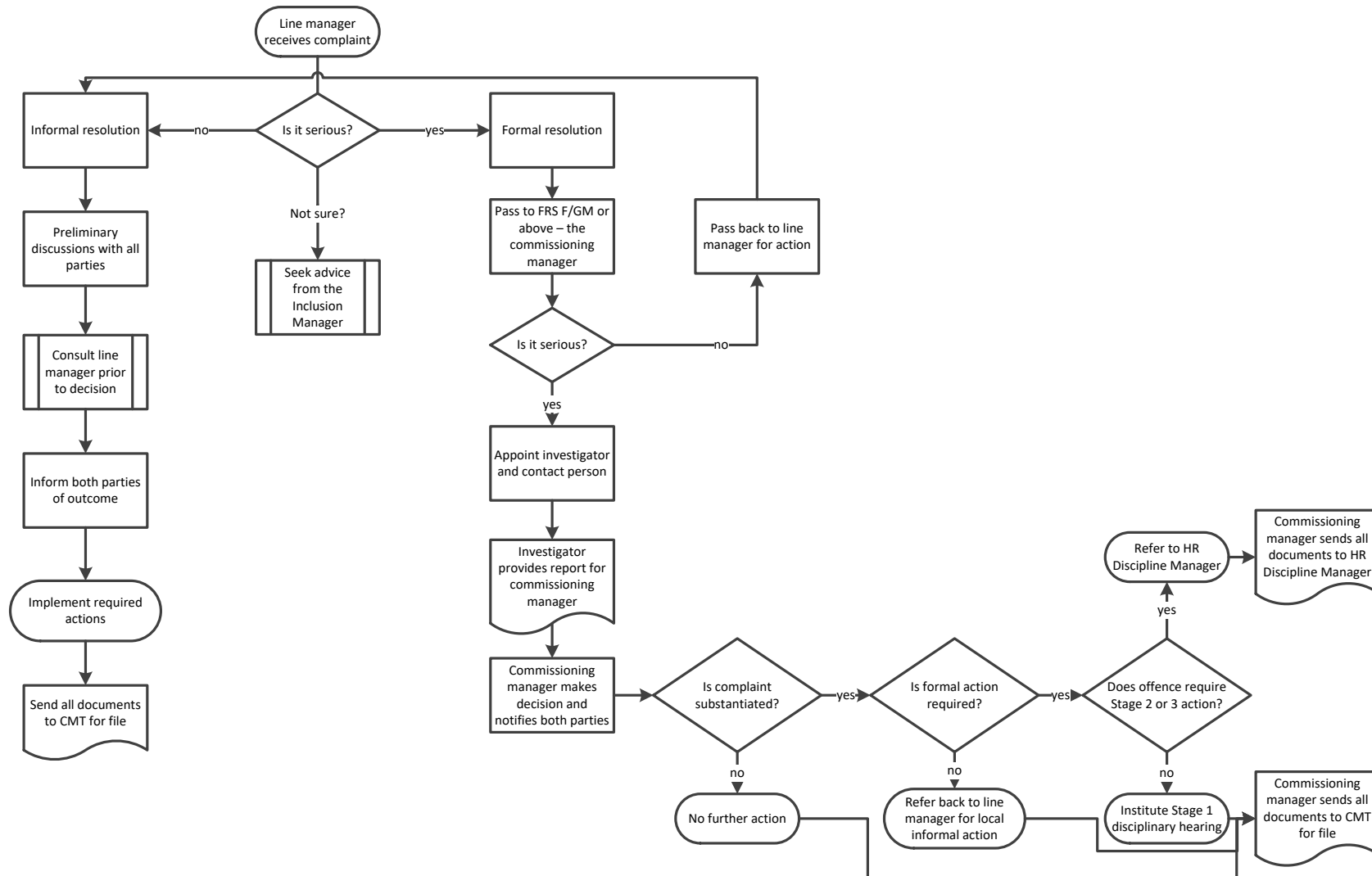
Vexatious

- 8 For a complaint to be vexatious it would need to be established that the complainant did not think or feel any of the constituent elements of harassment and the only reason the complainant made the complaint was to annoy, worry or cause trouble for the accused person, often as an act of retaliation.

Consideration for managers

- 9 In most cases a complainant holds a genuine belief that they have been subject to harassment. However, it is sometimes the case that in the heat of the moment a member of staff will complain of harassment without thinking through the consequences of their action.
- 10 Where it looks as if the complaint may be false, spurious or vexatious, managers should warn the complainant accordingly and ask them if they wish to continue with their complaint.
- 11 In some cases, if the conduct that prompted their harassment complaint was a decision which affected them and which the complainant thinks was unfair and unwarranted, then they should be advised to consider lodging a grievance as an alternative means of seeking redress.

Appendix 7 – HCP case management flowchart



Document history

Assessments

An equality, sustainability or health, safety and welfare impact assessment and/or a risk assessment was last completed on:

EIA	19/02/2009	SDIA	28/08/2013	HSWIA	05/12/2018	RA	
-----	------------	------	------------	-------	------------	----	--

Audit trail

Listed below is a brief audit trail, detailing amendments made to this policy/procedure.

Page/para nos.	Brief description of change	Date
Page 2, para 1.8	Reference to the Authority's policy on Action against Harassment & Bullying Statement and Code of Practice, Policy Number 239 was removed as the policy was cancelled on 5 May 2009.	15/07/2009
Page 9, para 16.5	Changed contact from Democratic Services to Knowledge Management Team.	19/01/2010
Page 3, para 1.4 Appendix 1	Insertion of words "gender identity" and "gender reassignment". Insertion of words "gender identity" and "gender reassignment", in paragraph 4.	08/04/2010
Throughout	Updated the HR helpdesk extension number.	21/05/2010
Throughout	The term "assistant principal controller" has been replaced by "senior operations manager".	25/11/2010
Throughout	Human Resources (HR) updated to Human Resources and Development (HRD) and Equalities Services updated to the Corporate Management Team throughout in accordance with Top Management Review.	19/10/2011
Throughout	Department name change: Knowledge and Document Management Team has been replaced by Knowledge Management Team.	21/03/2012
Page 8	Made a grammar correction in section 13.1	21/08/2012
Throughout	Revised throughout – please read carefully to familiarise yourself with the content.	03/09/2013
Page 18	Subjects list and Freedom of Information Act exemptions tables updated.	29/01/2015
Page 1	Owner title and responsible work team details changed and changes to reflect the abolition of London Fire and Emergency Planning Authority, now replaced with London Fire Commissioner.	15/08/2018
Throughout	Advisory and Counselling updated to Counselling and Trauma Services.	14/11/2018
Throughout	This policy has been reviewed as current with minor changes made. Equality Adviser updated to Inclusion Manager/Head of HR Advice and Employee Relations. Please re-read to familiarise yourself with the content.	29/11/2018
Appendix 7	Minor changes made.	30/11/2018
Appendix 7	Head of Advice and Employee Relations' changed to 'Inclusion	04/12/2018

Page/para nos.	Brief description of change	Date
	Manager'.	
Throughout	Role to rank changes made to content.	15/10/2019
Throughout	Hyperlinks amended. Job titles changed to lower case.	22/07/2020
Throughout	Counselling and Wellbeing Service updated to Counselling and Trauma Service.	05/10/2021
Page 15	Paragraph 7 referencing PN0337 – Equality at work – interviewing skills has been removed as this policy has now been cancelled.	17/07/2023

Subject list

You can find this policy under the following subjects.

Equalities	Harassment
Complaints	

Freedom of Information Act exemptions

This policy/procedure has been securely marked due to:

Considered by: (responsible work team)	FOIA exemption	Security marking classification