



Harassment and Bullying Policy

Reviewed May 2011
Reviewed April 2012

Introduction

Kingston Mencap is committed to ensuring equal opportunities and fair treatment in the workplace for all its employees and volunteers. One of the key aims of the policy is to enable Kingston Mencap to provide a working environment in which all employees and volunteers feel comfortable and in which everyone is treated with respect and dignity, regardless of gender, sexual orientation, transgender status, marital or family status, colour, race, nationality, ethic or national origins, creed, culture, religion or belief, age, disability or any other personal factor or quality.

The purpose of this policy is to provide a route for employees and volunteers who believe that they have been harassed or bullied to raise a complaint either informally or formally.

Kingston Mencap will treat all complaints of harassment seriously and will investigate them promptly, efficiently and in confidence. The main aim of this policy is to provide a framework for resolving complaints of harassment or bullying and for stopping any behaviour that is causing offence or distress.

Right to report harassment/bullying

Employees and volunteers have an absolute right to complain if they are treated in a manner that they believe constitutes harassment or bullying. This will include behaviour that has caused offence, humiliation, embarrassment or distress. Apart from complaints about the behaviour of colleagues, employees and volunteers have the right to complain if they believe that they have been bullied or harassed by a third party, for example a customer, client or supplier. Employees and volunteers who raise a genuine complaint under this policy will under no circumstances be subjected to any unfavourable treatment or victimisation as a result of making a complaint.

However, if it is established that an employee or volunteer has made a deliberately false or malicious complaint against another person about harassment or bullying, disciplinary action will be taken against that employee or volunteer.

Any employee or volunteer who witnesses an incident that he/she believes to be the harassment or bullying of another employee or volunteer should report the incident in confidence either to a club leader or to the Chair of the Trustee Committee. Kingston Mencap will take all such reports seriously and will treat the information in strict confidence as far as it is possible to do so.

How to make a complaint

Before raising a formal complaint, the employee or volunteer is encouraged in the first instance to talk directly and informally to the person whom he/she believes is harassing him/her and explain clearly what aspect of the person's behaviour is unacceptable, or is causing offence, and request that it stop. It may be that the person whose conduct is causing offence is genuinely unaware that his/her behaviour is unwelcome or objectionable and that a direct approach can resolve the matter without the need for formal action.

Where an employee or volunteer would like support to make such an approach, he/she should contact the club leader or Chair of Kingston Mencap. If, however, the employee or volunteer feels unable to take this course of action, or if he/she has already approached the person to no avail, or if the harassment is of a very serious nature, he/she may elect to raise a formal complaint. Formal complaints may be raised with either the club leader, or if preferred, a Kingston Mencap trustee.

In bringing a complaint of harassment/bullying, the employee or volunteer should be prepared to state:

- the name of the person whose behaviour he/she believes amounts to harassment or bullying;
- the type of behaviour that is causing offence, together with specific examples if possible;
- dates and times when incidents of harassment or bullying occurred, and where they occurred;
- the names of any employees or volunteers who witnessed any incidents, or who themselves may have been the victims of harassment or bullying by the same person; and
- any action that the employee or volunteer has already taken to try to deal with the harassment.

Responsibility on the Club Leader or Trustee Committee to deal with complaints

Club leaders or Trustees who receive a complaint of harassment have a duty to investigate the matter thoroughly and objectively and to take corrective action. Club leaders and Trustees should be responsive and supportive towards anyone who raises a genuine complaint of harassment or bullying.

Kingston Mencap reserves the right, at its discretion, to suspend any employee who is under investigation for harassment or bullying for a temporary period whilst investigations are being carried out. Such suspension will be for as short a time as possible and will be on full pay. Volunteers can be asked to suspend volunteering for Kingston Mencap whilst investigations are being carried out.

Any employee or volunteer accused of harassment or bullying will be informed of the exact nature of the complaint against him/her and afforded a full opportunity to challenge the allegations and put forward an explanation for his/her behaviour in a confidential interview, with a companion present if he/she wishes. No employee or volunteer will be presumed guilty following an allegation of harassment or bullying against him/her.

Kingston Mencap regards all forms of harassment and bullying as serious misconduct, and any employee who is found to have harassed or bullied a colleague will be liable to disciplinary action up to and including summary dismissal. Volunteers will be asked to stop volunteering for Kingston Mencap. Kingston Mencap will maintain records of investigations into alleged incidents of harassment or bullying, the outcome of the investigations and any corrective or disciplinary action taken. These records will be maintained in confidence and in line with the provisions of the Data Protection Act 1998.

Appendix 1: Legislation Notes

The Equality Act 2010 came into force on 1 October 2010. The purpose of the Equality Act 2010 is to simplify discrimination legislation and create a more consistent and effective framework, while at the same time extending discrimination protection. The Act defines direct discrimination as less favourable treatment because of a protected characteristic. The protected characteristics under the Equality Act 2010 are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

The Equality Act 2010 makes harassment unlawful across all the protected characteristics, with the exceptions of marriage and civil partnership, and pregnancy and maternity. Harassment is defined as unwanted conduct related to a relevant protected characteristic that has the purpose or effect of:

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

For example, a male employee may be subjected to insulting and humiliating comments from his line manager because he is a Muslim. That employee can bring a claim for harassment related to the protected characteristic of religion or belief. In addition, if that employee's colleagues are also present when these comments are made, even though they are not directed at those individuals, they may also bring a claim for harassment related to the protected characteristic of religion as the line manager is creating an intimidating and offensive environment.

The Act sets out two specific definitions of sexual harassment, which are:

- conduct of a sexual nature that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment; and
- less favourable treatment related to sex or gender reassignment that occurs as a result of a rejection of or submission to sexual conduct.

In determining whether or not the unwanted conduct has the effect referred to, the factors that must be taken into account are:

- the perception of the complainant;
- the other circumstances of the case; and
- whether or not it is reasonable for the conduct to have that effect.

Harassment also includes the following:

- **Harassment based on association.** It is unlawful to discriminate against or harass any individual for association with another individual who has a protected characteristic (other than marriage and civil partnership, and pregnancy and maternity). For example, if an employer denies an employee a promotion because she is taking care of a disabled relative and the employer thinks that the employee will not have any time for new duties, this would amount to associative discrimination as age is one of the specified protected characteristics. Similarly, if an employer harasses an employee because his brother is gay, this would be unlawful as associative harassment as sexual orientation is another of the protected characteristics.
- **Harassment based on a perception.** It is unlawful to discriminate against or harass any individual based on a perception that he or she has a particular protected characteristic (other than marriage and civil partnership, and pregnancy and maternity) when he or she does not, in fact, have the protected characteristic. For example, a male employee may look much older than his age. If the organisation does not allow him to make presentations to clients because his line manager thinks that he is too old, the employee has been discriminated against because of a perception of the protected characteristic of age, even though he may be relatively young.
- **Third-party harassment.** Employers can be found liable for harassment of an employee in the course of his or her employment, based on any of the protected characteristics (other than marriage and civil partnership, and pregnancy and maternity), by third parties such as clients or customers. For an employer to be liable: the harassment must have occurred on at least two previous occasions (although not necessarily by the same harasser or suffering the same type of harassment); it must be aware that it has taken place; and it must have failed to take reasonable steps to prevent it from happening again. For example, if a waitress of Asian origin has complained on several occasions to her employer that a particular customer has been making racist remarks to her, the employer should take steps to protect the employee from such third-party harassment, such as banning the customer from the restaurant or allowing the waitress to take her break when that customer is in the restaurant. Failure to do so will make the employer liable for third-party harassment.

Victimisation occurs where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion, because he or she made or supported a complaint or raised a grievance under the Equality Act 2010, or because he or she is suspected of doing so. However, an employee is not protected from victimisation if he or she acted maliciously or made or supported an untrue complaint.

Whether or not harassment is related to any of the relevant protected characteristics, the employer may face claims of constructive dismissal from employees who have resigned on account of bullying or harassment at work, or on account of their employer's failure or refusal to deal adequately with a genuine complaint of harassment or bullying. Such a claim would be on the grounds that the conduct meted out to the employee was intolerable to the extent that it amounted to a breach of trust and confidence that left him or her with no alternative but to resign. A claim for constructive dismissal is contingent on the employee having a minimum of one year's continuous service with the employer.