

FAIR TREATMENT AT WORK POLICY AND PROCEDURE

Effective from 1 November 2012



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1. INTRODUCTION

The Council is committed to ensuring that employees are treated with dignity and respect whilst at work and acts of unfair treatment will not be tolerated. It is important to pay attention to the way employees treat each other and how they are managed. If employees are to perform at their best, they not only need to be set challenging targets, but they also need to feel that they are treated with fairness and respect.

It is important to recognise that individuals react to how they are treated in different ways and what is acceptable to one person may be regarded as harassment by another. The effect on an individual may be more than temporary hurt feelings - any discrimination could lead to loss of confidence, low morale, stress, poor performance, distress and unhappiness.

Scope

This policy and procedure applies to all employees with the exception of those in Schools who are covered by their own procedure. Any employee has the right to complain if they feel they are being treated unfairly however minor their complaint may seem to others. It is important that all complaints are taken seriously.

Definitions & Legislation

The Council's Fair Treatment at Work Procedure is designed to deal with complaints of harassment, bullying, victimisation and unlawful discrimination including dual discrimination and racism. Because of the wide range of possible scenarios, it is not feasible to provide a comprehensive list of examples of unfair treatment. However, examples are given under the definitions of unfair treatment listed in Appendix 1.

The Equality Act 2010 is the main piece of legislation relevant to the Fair Treatment at Work policy although a number of pieces of other UK and European legislation may be relevant. The Equality Act 2010 identifies the types of behaviour that may be unlawful as well as demonstrate the value of a Fair Treatment at Work Policy and Procedure that raises awareness, makes clear the implications of unacceptable behaviour and provides a mechanism for dealing with any complaints that arise.

Comprehensive practical guidance on the Equality Act 2010 is available on the Equality and Human Rights Commission and Government Equalities Office websites at these links: [Equality and Human Rights Commission](#) and [Government Equalities Office](#).

2. FAIR TREATMENT AT WORK POLICY

The Council is committed to Valuing Diversity in its workforce and aims to ensure that all employment decisions are fair and objective, employees are treated with respect and understanding and that there is no unlawful discrimination.

The Council's commitment:

In order to provide the best possible opportunity for employees to contribute to organisation goals and to realise their potential, employees, whilst at work, are entitled to expect the Council to:

- Promote mutual respect between all employees and to help to ensure that employees are treated courteously.
- Protect them from bullying, harassment, unlawful discrimination and victimisation.
- Provide clear rules and standards of behaviour and to seek to ensure that these are fairly

and equitably applied through appropriate procedures.

- Provide appropriate support to employees who may be unfairly treated.
- Take action when breaches of this Policy are brought to its attention.

The Council's expectations of employees:

In order to do the above, the Council expects employees to:

- Treat each other and the Council's customers with respect, fairness and courtesy.
- Adhere to the Employee Code of Conduct.
- Bring to its attention any breach of this policy.
- Support firm action being taken against any individual who breaches this policy.

3. FAIR TREATMENT AT WORK PROCEDURE

Purpose

The Council is committed to ensuring that employees are treated with dignity and respect whilst at work and acts of unfair treatment will not be tolerated. Most of the time complainants simply want the unfair treatment to stop so that they can resume their normal working life. The Fair Treatment at Work Procedure has been put in place to deal with complaints of unfair treatment and unlawful discrimination to ensure that a clear process is available for staff to raise their concerns.

The Fair Treatment at Work Policy and Procedure provide a clear statement of expectations and a framework through which issues of harassment, bullying, victimisation and unlawful discrimination can be raised by individuals and appropriate action taken. To show how seriously the Council takes this matter, breaches of the Policy and Procedure may result in disciplinary action including dismissal.

There are two processes for dealing with a concern or complaint. These are:

- **Stage 1 - Informal**
- **Stage 2 - Formal**

The Informal Process is most effective when employees raise issues early. Many cases have been successfully resolved at an early stage without recourse to the formal process or the matter turning into a more serious disciplinary issue.

Employees are encouraged to use the informal procedure rather than immediately choosing the formal route. There may, however, be situations where the formal procedure is triggered without prior use of the informal process e.g. where the complaint is considered to be complex or where it is the complainant's choice to proceed in that way. This is entirely acceptable in the interest of ensuring the complaint is properly investigated and appropriate action taken. **An employee has the right to choose which procedure they wish to follow.**

Where, at any point, it becomes apparent that there has been a serious breach of the Council's rules, it will not be right to follow the Fair Treatment at Work Procedure and in these circumstances, the Council's Disciplinary Procedure will be activated instead. If the Disciplinary Procedure is activated, individuals will still have access to confidential support from the

Occupational Health Service and trade unions.

The Formal Process (explained below) replaces the Council's Grievance Procedure for complaints regarding unfair treatment at work, i.e. harassment, victimisation, bullying and other forms of discrimination e.g. racism, sexism, unfair treatment related to an individual's disability, homophobia, etc either face to face or via text message and/or email.

Details of both the informal and formal Fair Treatment at Work processes are as follows:

■ Stage 1 - Informal Process

The informal process enables issues to be resolved quickly and effectively between both parties nearest to the point of origin and to restore positive relationships at work.

Employees are encouraged to use the informal process first in an attempt to resolve the situation. Individuals may, however, resort directly to the formal process (Stage 2) if they wish.

The complainant has a choice of options (**see flowchart on Page 8**):

- (a) **Direct discussion** with the person who is the subject of the complaint (with or without support from another person);
- (b) **Indirect approach** by requesting someone else to talk to the person who is the subject of the complaint; this may be by:
 - (i) **Approach to management** who may be able to assist;
 - (ii) **Seeking facilitation** using employees specially trained by the Council called **Facilitators** who can act as a 'go-between' to try to resolve the problem. This approach requires co-operation between both parties;
 - (iii) **Approach to a Senior HR Adviser in the HR Service** for advice and assistance.
- (c) **Talk through options** – approach any of the people listed in b (i) – b (iii) above for advice only i.e. not to inform or discuss the matter with the person who is the subject of the complaint.
- (d) Alternatively, individuals may wish to seek support from their **Trade Union representative**. In addition, the **Occupational Health Service** can provide completely confidential emotional support.

The Informal process is expected to:

1. foster a safe and constructive environment where both parties can engage in open and honest dialogue.
2. encourage both parties to move away from their initial positions by appreciating each other's point of view, personal interests and underlying needs.
3. provide opportunities for both parties to consider and explore the causes and impact of conflict upon themselves and each other.
4. explore all the issues in full, reach a consensus and agree an action plan for future work relationship

If the situation remains unresolved in spite of informal efforts, the employee may then decide to make a complaint under the Formal Process.

If it appears that the Council's disciplinary rules have been broken, then the matter should normally be referred to other procedures e.g. the Disciplinary Procedure depending on the circumstances.

■ Stage 2 - Formal Process

This stage allows for a formal investigation of the issues and an opportunity to explore a variety of options in order to re-establish working relationships.

Whilst the Council's Grievance Procedure covers matters which are specific to an individual in relation to their service and/or conditions of service with the Council, this process replaces the Grievance Procedure for complaints regarding unfair treatment at work, e.g. harassment, victimisation, bullying and racism.

Step One – Lodging a Complaint

The complainant must put the details of their complaint in writing using the Formal Notification Form (Appendix 2) and include, where possible, details of the outcome they are seeking.

Formal complaints must be lodged within 3 calendar months of the date of the act complained of. Extension of this time limit will only be agreed where management accept that it was not reasonably practicable for the employee to lodge the complaint in time.

Step Two – Formal Resolution Process

If it is apparent that the Council's rules may have been broken, it may be appropriate to suspend action under the Fair Treatment at Work Process and investigate the matter further under the Council's Disciplinary Procedure.

On receiving a formal complaint, the manager should acknowledge receipt of the complaint within 5 working days outlining the timescale for resolving the issue. Investigations will be conducted as quickly as reasonably practicable in the circumstances, commensurate with conducting a fair and thorough investigation and the complainant should be kept informed of progress.

A copy of the Formal Notification form should be sent to a Senior HR Adviser.

The manager will invite the complainant and the person who is the subject of the complaint to a meeting to discuss the complaint. The decision to meet both parties in one meeting or two separate meetings will be at the manager's discretion which will take into account the seriousness and sensitivity of the case. The purpose of the meeting is to investigate the complaint as detailed on the Formal Notification Form and to identify ways of resolving the issue/s.

Any information available prior to the meeting should be sent to both parties before the meeting if possible.

Once all the relevant information has been considered, the manager will make a decision as to how the complaint can best be resolved. The outcome will be sent to both parties in writing. The complainant should be notified of their right of appeal (see below).

Step Three - Appeal Process

If the complainant is not satisfied with the decision of the manager at Step Two, he/she can appeal. The appeal will usually be heard by a more senior officer than the one who determined the original outcome i.e. usually the manager's manager. In exceptional circumstances e.g. where it is appropriate for a Director to hear the original complaint, the appeal may be heard by the Chief Executive.

The grounds of appeal must be put in writing and lodged within 10 working days of the date of the letter confirming the decision. The decision at the appeal stage is final with no further right of appeal.

Right to be accompanied/Support & Advice

Both parties have the right to be accompanied by a Trade Union representative or workplace colleague. The companion should not be anyone whose presence would prejudice the hearing or where there is a conflict of interest. If any witnesses are called, they do not have the right to be accompanied.

In addition, the Occupational Health Service can provide completely confidential emotional support to both parties.

■ Procedure for Ex-employees

Complaint lodged by an individual who has left employment

The following procedure will apply where:

- A complaint had not been made before the employment ended; or
- A complaint had been made prior to the employee's last day of service but the process outlined above had not started or had not been completed; and
- Both parties agree in writing that it should be used instead of the process above; or
- It is not reasonably practicable to use the standard process.

Step one (Statement of complaint) - The individual sets out in writing the nature of the complaint and sends it to their manager's manager.

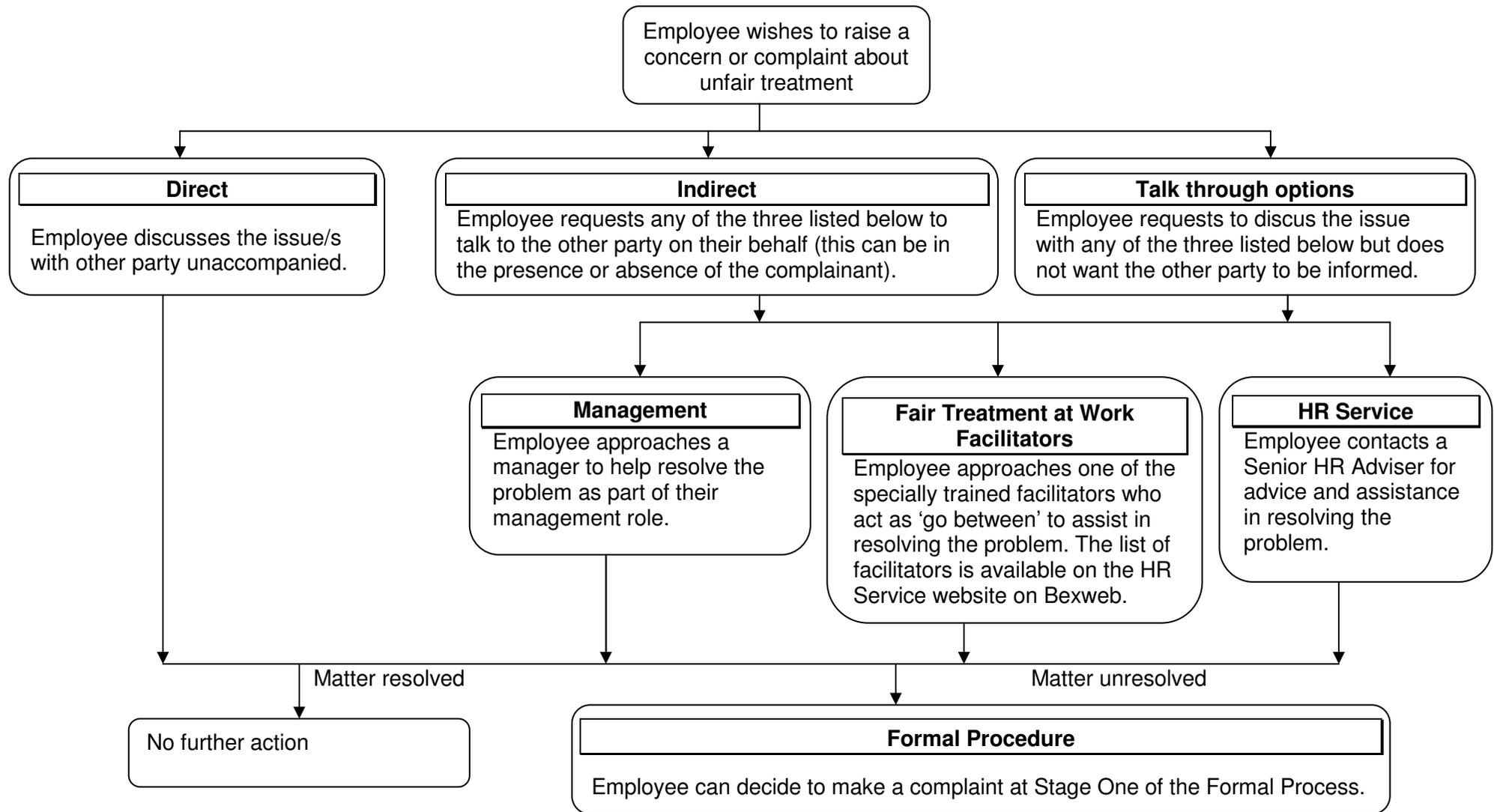
Step two (Response) - The manager's manager sets out the Council's response in writing and sends it to the individual.

■ Monitoring

Records must be kept detailing the nature of the allegation, any agreed actions and the timescales using the Monitoring Form in Appendix 3. Managers and Facilitators involved in the Informal process and the manager hearing the complaint at the Formal process should complete the Monitoring Form and send it to the HR Service for monitoring purposes.

The Monitoring Form will be kept confidential and retained in accordance with provisions of the Data Protection Act 1998.

FAIR TREATMENT AT WORK PROCEDURE – INFORMAL PROCESS



FAIR TREATMENT AT WORK PROCEDURE – FORMAL PROCESS

Step One – Lodging a Complaint

Employee raises request for matter to be resolved through the Formal Process with the appropriate manager using the Formal Notification Form. Employee must provide full details of the complaint including the desired outcome and any attempts to resolve the matter informally.

Step Two – Formal Resolution Process

If it is apparent that the Council's rules may have been broken, it may be appropriate to suspend action under the Fair Treatment at Work Process and investigate the matter further under the Council's Disciplinary Procedure.

Manager hearing the complaint sets up a meeting with both parties at the same time or two separate meetings at his/her discretion taking into account the seriousness and sensitivity of the allegations. The meeting may include calling witnesses.

Both parties should receive any information available prior to the meeting if possible.

Both parties have a right to accompanied by a trade union representative or work colleague where there is no conflict of interest.

The manager hearing the complaint may adjourn the meeting to seek further information if necessary.

A representative from HR Service will attend the hearing.

Decision

Once all the information has been considered, the manager will make a decision as to how the complaint can best be resolved. The outcome will be sent to both parties in writing. The complainant should be notified of their right of appeal.

Step Three - Appeal Process for complainant

If the employee is not satisfied with the decision of the manager, he/she can appeal to the manager's manager within 10 working days of the date of the letter setting out the manager's decision at Step Two. The appeal must be set out in writing with the grounds of appeal clearly stated.

The decision at the appeal stage is final with no further right of appeal.

DEFINITIONS

Equality Act 2010 (the Act) sets out the ‘protected characteristics’ that qualify for protection from discrimination. A person is protected from discrimination on the basis of:

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

Direct Discrimination can be described as an act, which has the effect of treating a person less favourably than another and is against the law. This currently includes discrimination on the grounds of a ‘protected characteristic’ (listed above) although discrimination for other reasons may also be found to be unlawful. For example, it would be against the law not to employ a female employee just because she is female, may become pregnant and take maternity leave.

Direct discrimination (associative and perceived) covers discrimination resulting from a person’s association with someone having a protected characteristic. It also covers treatment on the grounds of perceived status, for example, where someone is treated less favourably because they are perceived to hold a certain religious belief, even if the perception is wrong. Associative discrimination does not apply on the basis of marital or civil partnership status. It must be the victim, rather than anybody else, who is married or the civil partner.

Direct age discrimination can be objectively justified in some circumstances. It is not direct discrimination to treat a disabled person more favourably than a non-disabled person and a man cannot claim discrimination where special treatment is given to a woman in connection with pregnancy or childbirth.

Racism is a specific type of unlawful discrimination and can also constitute harassment. The Race Relations Act defines racial discrimination on the grounds of colour, race, nationality (including citizenship), ethnic origin and national origin. The Council will not tolerate any form of racist behaviour; an example would be to refuse training for an employee just because he/she is black.

Institutional Racism has been defined by Lord Macpherson as “The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.” An example of this may be an organisation failing to follow up a complaint of racism with no action taken to deal with the specific complaint or prevent it re-occurring.

Harassment - where a person engages in unwanted conduct relating to a protected characteristic (apart from pregnancy, maternity, marriage and civil partnership) which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. It includes harassment based on association or perception. For example, it covers harassment based on a person’s association with their disabled child or harassment based on a perception that a person is gay.

Harassment may be intentional or unintentional and the perception of the victim is important. It can be described as unwanted or unwelcome words or behaviour that causes offence or makes a person feel humiliated or distressed. This type of treatment may badly affect the recipient’s

well being, employment prospects or work performance and create an uncomfortable or frightening working environment. It may be related to sex, sexual orientation, race, disability, religion, nationality, age, or any personal characteristic of the individual. For example, repeated and unwelcome comments about an individual being disabled, lesbian, gay, or black would be considered harassment, as would deliberately touching a colleague in a way that was unwelcome. Continually giving a black member of staff the worst tasks in the office because of their colour would also be considered to be harassment. Remember, racial harassment is not only a disciplinary offence it may also constitute a criminal offence. Other types of behaviour such as making rude gestures and initiation ceremonies could also be considered harassment.

Sexual Harassment – any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sex-based Harassment – unwanted conduct related to the sex of a person with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating, or offensive environment.

Bullying is a form of harassment. It is the frequent belittling and undermining of an individual through behaviour that reduces their confidence and self-esteem. For example, a manager regularly shouting at a member of staff in front of colleagues and members of the public would be a clear case of bullying. Other examples include excessive teasing, exclusion, making threats about job security without foundation, spreading malicious rumours and the misuse of power and position. Like harassment and racism, bullying is not necessarily face-to-face, it may be by other methods e.g. written communications, phone calls, texts and electronic mail.

Bullying can be hard to recognise and may be subtle. The recipient may be anxious that others consider them weak or that they may be seen as “overreacting”, they may also worry that they will not be believed. Sometimes a relatively minor incident hides an underlying pattern, it is important to remember that for the recipient this incident may be the “last straw”.

Victimisation can be described as subjecting a person to a detriment because they have done or it is believed they have done or may bring proceedings under the Equality Act, give evidence or information in connection with proceeding under the Act, do any other thing for the purposes of or in connection with the Act, make an allegation that another person has contravened the Act. This may include the individual being ill treated or being treated less favourably. For example, if a manager stopped talking to a member of their team because they had given evidence on behalf of another member of staff at a disciplinary hearing, they would be victimising them.

CONFIDENTIAL

FORMAL NOTIFICATION FORM

Please note that only issues raised on this form will be considered as part of the Fair Treatment at Work procedure. Once completed, please send to your manager and/or your Senior HR Adviser.

Name: Management Group:

Job Title: Section:

Manager:

Details of alleged unfair treatment: (Please continue on a separate sheet if necessary).

Please outline how you think this situation could best be resolved

(Please continue on a separate sheet if necessary).

Please state action/s taken so far to resolve your complaint.

(This may include details of facilitation and/or indirect support already provided under the Informal Process. Please continue on a separate sheet if necessary).

When did you first raise the unfair treatment?

Signed Date:

STRICTLY CONFIDENTIAL

MONITORING FORM

1. DETAILS OF COMPLAINANT

Name of complainant

Date of discussion/meeting

Complainant's Management Group/Section

2. DETAILS OF PERSON AGAINST WHOM COMPLAINT IS MADE

Name:

Directorate/Section:

3. NATURE OF COMPLAINT/DISPUTE

- | | |
|--|--|
| <input type="checkbox"/> Racial harassment | <input type="checkbox"/> Race discrimination |
| <input type="checkbox"/> Sexual harassment | <input type="checkbox"/> Sex/Gender discrimination |
| <input type="checkbox"/> Sex based harassment | <input type="checkbox"/> Victimisation |
| <input type="checkbox"/> other harassment | <input type="checkbox"/> Bullying |
| <input type="checkbox"/> Personal issue | <input type="checkbox"/> Dispute with colleague(s) |
| <input type="checkbox"/> Dispute with manager | <input type="checkbox"/> Unfair treatment by manager |
| <input type="checkbox"/> Inappropriate behaviour | <input type="checkbox"/> Team conflict |
| <input type="checkbox"/> Performance related issue | <input type="checkbox"/> Poor attendance |
| <input type="checkbox"/> Age related | <input type="checkbox"/> Religion/belief |
| <input type="checkbox"/> Gender Reassignment | <input type="checkbox"/> Disability discrimination |
| <input type="checkbox"/> Sexual orientation | <input type="checkbox"/> Other, please specify |

Please give brief details below

5. WAS THIS COMPLAINT DISCUSSED INFORMALLY FIRST? (e.g. with a facilitator)

If yes, has a formal complaint been raised?

6. OUTLINE AGREED ACTION/S TAKEN (OR TO BE TAKEN) BY BOTH PARTIES

Following the Formal/Informal Process on (date) both parties agreed to resolve the issue by (please list the agreed actions with timescales):

7. FACILITATOR/MANAGER’S ASSESSMENT

My assessment of the process is that both parties:

- Freely expressed their feelings and concerns
- Agreed on how the issue could best be resolved
- Made a commitment to take forward the agreement

8. AT WHAT STAGE WAS THE MATTER CONCLUDED (Informal, formal, Appeal)?

Name of facilitator/Manager Date

*Please return the completed form to Lorraine Barlow, Interim Head of Service HR Advisory, Room 211, Hill View, Please mark the envelope **PRIVATE***