



**MODEL ANTI-
HARASSMENT POLICY
FOR
VOLUNTARY AIDED
CATHOLIC SCHOOLS**

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DIOCESAN EDUCATION SERVICE

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ARCHDIOCESE OF BIRMINGHAM
DIOCESAN EDUCATION SERVICE

**MODEL ANTI-HARASSMENT¹ POLICY FOR
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1 INTRODUCTION

- 1.1 Catholic schools aim to be places where love of one's neighbour is obvious at all times. As St. John reports, Christ said to His disciples at the Last Supper 'This is my commandment, that you love one another, as I have loved you'.
- 1.2 Catholic schools are staffed by teachers who are not only qualified and expert in their own field but who also, having freely chosen to become teachers in a Catholic institution, commit themselves to care for and support each other in every way possible consistent with the teachings of Christ, Gospel values, Catholic doctrine, and the ethos of the school.
- 1.3 The governing body has adopted this policy² in order to promote positive working relationships and equal opportunities in employment, so that all employees feel fully valued as members of Christ's family and are free to develop their abilities to the full.
- 1.4 All members of the school community have a duty to ensure that Gospel values underpin the relationships within the school and should draw on the guidance offered in 'Christ at the Centre'. Whilst not definitive, the core values based on the Beatitudes may be summarised as follows:
- faithfulness and integrity;
 - dignity and compassion;
 - humility and gentleness;
 - truth and justice;
 - forgiveness and mercy;
 - purity and holiness;
 - tolerance and peace;
 - service and sacrifice³.

¹ See Appendix 1 for definitions

² This policy is based on the Birmingham City Council Model Policy and Procedure, dated May 2007.

³ 'Christ at the Centre' 2008 Fr Marcus Stock STL MA

- 1.5 The governing body acknowledges its legal obligation to promote a working environment free from harassment.
- 1.6 The governing body is also aware of its duties under racial, disability and gender equality laws See **Appendix 1**, including the training of employees in their responsibilities.
- 1.7 The governing body will ensure that prompt and appropriate action is taken to deal with any complaints which come under the scope of this policy. This includes action where there is a possibility of victimisation for making or for otherwise being involved in a complaint.
- 1.8 The governing body expects all those dealing with complaints to make objective decisions, without fear or favour.
- 1.9 This policy will be applied in accordance with statutory regulations for the governance of the school which may apply at any time in accordance with the procedures and delegations adopted by the governing body under those regulations.
- 1.10 The governing body is responsible for ensuring that the policy and procedures are implemented as part of the normal arrangements for the management of the school. The policy and procedures must be drawn to the attention of all staff at the school. All employees must comply with the policy and procedures as failure to do so may lead to disciplinary action.
- 1.11 The headteacher and governing body must ensure that the school puts 'Christ at the centre of everything it does by integrating Gospel values and the teachings of the Catholic Church into every aspect of learning, teaching and totality of school life'⁴.
- 1.12 This is in addition to any statutory responsibilities the headteacher and governing body may have for the elimination of harassment and bullying of staff employed at the school and also, for the conduct of any investigation which takes place after an allegation has been made.
- 1.13 The role of the Diocesan Schools Commission (DSC) and the Local Authority (LA) is to provide help and support to schools to identify and deal with effectively, any unacceptable or discriminatory behaviour falling within the terms of this policy and thereby enabling the working environment of the school to be a spiritual, happy and fulfilling place.
- 1.14 Any employee who is subject to harassment during his/her employment may initiate action under this policy.
- 1.15 The professional associations and trade unions have a key role to play at all stages when complaints are made and staff have a right

⁴ 'Christ at the Centre' 2008 Fr Marcus Stock STL MA

to consult with their professional association/trade union at any stage of the process.

- 1.16 All parties are entitled and encouraged to keep a confidential written record of incidents and actions taken throughout this procedure.

2 THE PURPOSE

- 2.1 The purpose of this policy is to deal with cases of alleged harassment between employees of the school. Other complaints should be raised through the appropriate procedures. See **Appendix 2.**

3 THE POLICY

- 3.1 The governing body wish to promote positive working relationships where all employees are able to develop their abilities to the full. The governing body are committed to achieving a working environment free from harassment. This policy covers not only those aspects of harassment for which there is statutory protection but also bullying. See **Appendix 1.**
- 3.2 The governing body will not tolerate harassment of any kind and will require the headteacher to act in accordance with this procedure, including invoking disciplinary procedures when appropriate.
- 3.3 Harassment is unwanted conduct affecting the dignity of men and women at work. This can include unwelcome physical, verbal and non-verbal conduct. It may be specifically prohibited by law, as is harassment based on race, sexual orientation, gender, disability, religion or age. It may arise from other prejudices or simply from one person's conduct towards another. See **Appendix 1.**
- 3.4 Harassment is contrary to Gospel values, creates an intimidating and unpleasant atmosphere at work and may affect an employee's health, safety and welfare. Harassment can also prevent employees contributing effectively to the organisation.
- 3.5 The governing body takes any allegations or complaints of harassment seriously and will provide informal and formal methods for dealing with them. Allegations will be handled sensitively and employees will be protected against victimisation for making or for being involved, in a complaint.
- 3.6 An employee may contact his or her professional association/trade union at any stage in this procedure.

4 THE LAW

- 4.1 Harassment can amount to unlawful discrimination under the *Equality Act 2010*⁵.
- 4.2 Employers are expected to have taken steps to prevent harassment.
- 4.3 Claims of harassment under these acts can be brought against the alleged harasser and against the employer. An employer is liable for the discriminatory acts of employees acting in the course of their employment, whether or not they are done with the employer's knowledge or approval unless they are able to show that they took all reasonably practical steps to prevent employees carrying out unlawful discrimination.
- 4.4 Additionally, harassment can be a crime (*the Criminal Justice and Public Order Act 1994 and the Protection from Harassment Act 1997*). See **Appendix 1**.

5 MALICIOUS ALLEGATIONS

- 5.1 The fact that an allegation is not substantiated does not mean that it is considered to have been malicious. No action will be taken against anyone who makes an allegation in good faith, reasonably believing it to be true, even if the allegation is not subsequently confirmed by an investigation.
- 5.2 In order for an allegation to be deemed malicious there would have to be independent corroboration, e.g. evidence of the falsification of information. Nevertheless, there may be exceptional cases where the evidence leads the investigator to conclude that the allegations may have been malicious. In such cases the investigator should refer his/her concerns to the DSC and LA for further advice.
- 5.3 All parties will be informed in writing if, following further investigation (which must include a further interview with the employee making the allegations), the allegations are deemed to be malicious. A statement that 'allegations deemed to be malicious could lead to disciplinary proceedings' must be included in the letter.

⁵ The Equality Act 2010 has subsumed the following: *Sex Discrimination Act 1975*, the *Race Relations Act 1976 (and Race Relations (Amendment) Act 2000)*, the *Disability Discrimination Acts 1995 and 2005*, the *Equality Act 2006*, the *Employment Equality (Sexual Orientation) Regulations 2003*, the *Employment Equality (Religion or Belief) Regulations 2003*, the *Employment Equality (Age) Regulations 2006*

6 THE PROCEDURE FOR DEALING WITH ALLEGATIONS (INFORMAL STAGE)

- 6.1 The purpose of the informal stage is to bring the matter to the attention of the alleged harasser and to give that person an opportunity to change his or her behaviour.
- 6.2 Although termed 'informal stage', all concerned must be made aware that the school takes the issue seriously and those charged with dealing with the issues must act accordingly.
- 6.3 Wherever possible, employees who believe that they are subject to harassment should tell the person who is causing the problem that the conduct in question is unwanted and/or offensive and must stop. This is a positive step and may help to resolve the situation.
- 6.4 Employees are encouraged to attempt to resolve perceived harassment informally before using the formal stage of these procedures. This is likely to produce solutions, which are speedy, effective and restore positive relationships in the workforce. It will also help to minimise embarrassment and the risk of breaching confidentiality. However, the benefits of informal solutions should not discourage employees from using formal procedures where they prefer that option.
- 6.5 An individual may wish to ask for support from his/her line manager, a colleague, or professional association/trade union representative, in bringing the matter to someone's attention. This should be a matter of personal choice but such action may be particularly helpful where the alleged harassment is by the employee's headteacher or line manager.
- 6.6 At this stage, so as not to prejudice any subsequent, formal action, the governing body should not be approached.
- 6.7 People supporting someone making an allegation of harassment may also act as intermediaries, or may be able to suggest a suitable intermediary in a particular case. An intermediary should be able to explain perceptions to the parties concerned without passing judgments and may be able to suggest solutions.
- 6.8 Mediation may also be appropriate at this stage possibly from a DSC/LA nominee and a request for mediation should be made via the headteacher.
- 6.9 The role of mediator should be separate from that of investigator or any person offering support. Experience has shown the effectiveness of mediation in resolving matters without recourse to formal procedures. Formal procedures by their adversarial nature may heighten distress even though they succeed in stopping the harassment.

- 6.10 It is recognised that an employee who feels that he or she has been harassed by the headteacher, may be reluctant to approach the headteacher directly and may therefore prefer to make a formal complaint. An employee in this position may wish to seek the advice of his/her professional association or trade union.
- 6.11 Complaints should normally be made by the employee experiencing the alleged harassment. However an employee, who witnesses behaviour which he/she deems inappropriate and possibly constituting harassment or bullying, may also make a complaint. The witness should initially discuss the matter with the person he/she thinks is being harassed.
- 6.12 The decision whether to pursue the matter further normally remains with the person subjected to the alleged harassment. However, in the event of repeated harassment of the same person or a single incident of extreme seriousness, the witness to such behaviour should report the matter to his/her line manager, headteacher or chair of governors.
- 6.13 In cases of harassment by the headteacher, the matter should be reported to the chair of governors, who will take advice from the DSC and LA.
- 6.14 It could also be appropriate at this stage for the witness to discuss the situation with his/her professional association/trade union who can offer advice, especially if the employee, who is the subject of the harassment, is reluctant to make an allegation regarding harassment by the headteacher, to the chair of governing body.

7 CONSIDERATION OF FURTHER ACTION.

- 7.1 Formal procedures would be appropriate where a previous attempt at informal resolution has proved unsuccessful. Furthermore, there will be some instances where the seriousness of the alleged harassment warrants formal action, and possible criminal proceedings.
- 7.2 If further action is considered then employees should be encouraged to contact their professional association or trade union for advice and support.

8 THE PROCEDURE FOR DEALING WITH ALLEGATIONS (FORMAL STAGE)

- 8.1 If the employee decides to raise the matter formally, then contact should be made with the headteacher. The person making the allegation of harassment should identify the harasser and the behaviour which is unacceptable. The allegation should be put in writing and sent to the headteacher. If the allegation is about a headteacher refer to **Section 13**.

- 8.2 The headteacher in exceptional circumstances (e.g. where there are health and safety issues) may request both parties to agree to remain 'off work', granting paid leave of absence, until advice from the DSC and LA has been received on how to proceed.
- 8.3 The headteacher will then immediately follow the procedure outlined below:
- inform and seek advice from the DSC and LA;
 - acknowledge the allegation in writing (and refer to the date of receipt) and inform the employee that he/she will be invited to attend a meeting to discuss the matter;
 - inform the alleged harasser of the nature of the allegation in writing, explaining:
 - that he/she will be interviewed as part of the investigation;
 - that he/she should contact their professional association or trade union;
 - that he or she is entitled to make a written statement;
 - the possible outcomes of the investigation. See **paragraph 8.16**.
- 8.4 The headteacher will also consider re-arranging work or duties so that contact between the parties is minimised.
- 8.5 Mediation may be offered, with the headteacher making the necessary arrangements where this is agreed by both parties.
- 8.6 If mediation is not agreed or is unsuccessful, the headteacher will find an appropriate person to investigate. In small schools it may be difficult to find a senior employee not already aware of the alleged harassment. If a suitable investigator cannot be found within the school, the headteacher is advised to contact the DSC and LA for advice.
- 8.7 The headteacher will draw up terms of reference and provide guidance on how to conduct an investigation and provide relevant information and documentation for the person appointed as investigator, see **Appendix 3**. Advice should be sought from the DSC and LA.
- 8.8 As part of the terms of reference the headteacher should draw attention to any aspects which should be disregarded for the purposes of the investigation. Where necessary the headteacher should identify a person in the school to provide a link for the investigator.

- 8.9 Where an investigation takes place, the headteacher should ask all relevant staff to co-operate with the investigation.
- 8.10 The investigation must be objective and handled with sensitivity and due respect for the rights of both the complainant and the alleged harasser, who will both be entitled to representation by their professional association/trade union, a colleague or a friend of their choice.
- 8.11 If there are witnesses to the allegations, they should be interviewed by the investigator and will be expected to provide a signed and dated statement.
- 8.12 An employee making an allegation of harassment will be encouraged to name those witnesses whom he/she would wish to be interviewed and the investigating officer must make every effort to ensure such interviews take place.
- 8.13 The investigation should be completed as quickly as possible, and within the following time-scales: 5 working days⁶ to identify an investigating officer, 20 working days for the investigation to be completed and 5 working days to produce the report setting out the findings of the investigation. The headteacher is responsible for ensuring that these timescales are met.
- 8.14 If it proves impossible to adhere to these time-scales then the headteacher should seek advice from the DSC and LA, who will consider what action can be taken to expedite the investigation.
- 8.15 When the investigation has been completed the headteacher should meet with the investigator, to determine whether the report fulfils the remit for the investigation and to obtain any necessary clarifications. In very exceptional circumstances, the headteacher may decide to re-open the investigation or arrange for a fresh investigation. In such cases both the complainant and the alleged harasser will be informed of the headteacher's decision and the reasons for it. Once the headteacher is satisfied with the investigation process and the report, he/she will then formally receive the report and become responsible for deciding on appropriate action.
- 8.16 The headteacher has three options:
- a) to take no further action;
 - b) to acknowledge a gap between intentions and perceptions and reaffirm the school's expectations as far as employees' conduct is concerned (arranging training or support where appropriate);
 - c) to institute disciplinary proceedings.

⁶ Throughout these procedures 'working days' refer to the 195 days the school is in session

- 8.17 If the headteacher is contemplating disciplinary action, the person against whom the complaint has been made is entitled to respond in writing and/or by an interview before a decision is taken to refer the matter to a disciplinary hearing⁷ .
- 8.18 If that person chooses to respond in writing, the headteacher may write back to seek clarification on certain points and should discuss them with the investigator. If it is decided to proceed to a disciplinary hearing, the complainant will be advised that the institution of disciplinary proceedings marks the end of the anti-harassment procedure in this case, subject to any appeal by the complainant.
- 8.19 Even though it is unlikely that the complainant will be dissatisfied with the proposal to begin disciplinary procedures, the complainant should be advised in writing of the right of appeal, see **Section 9**, in accordance with the statutory Dispute Resolution Regulations⁸.
- 8.20 The report will be presented as evidence in the disciplinary case but will not be released to the complainant because of the confidentiality of disciplinary proceedings. (Release of the report to the complainant might also foster collusion amongst witnesses.)
- 8.21 The complainant may be asked to appear as a witness in those proceedings. When the disciplinary proceedings have been completed the complainant will be advised of their completion in a meeting and informed whether or not a disciplinary sanction has been imposed. The complainant will not be told the details of the case or the level of any sanction imposed.
- 8.22 If no disciplinary action is contemplated, the headteacher will confirm in writing the time and place for separate meetings with the complainant and the alleged harasser. This shall be done within five working days from the headteacher's formal acceptance of the investigation report, unless this is impossible due to sickness or other unavoidable absence, in which case the meeting will be rearranged. The letter inviting the parties to their respective meetings should also confirm that each has the right to be accompanied in the meeting by a friend or other representative of his or her choice. The recommended protocol for the conduct of meetings in **Appendix 4** will apply.
- 8.23 In each of the separate meetings the headteacher will provide a written summary of the findings of the report, with due regard to the rights of third parties under the *Data Protection Act 1998*. The headteacher should confirm that witnesses named by both the complainant and the alleged harasser have been interviewed by the investigator, but not disclose which particular piece of information has been given by which witness(es). If there were no witnesses

⁷ If the headteacher has been involved, then the Disciplinary Panel of the governing body would need to hear the case.

⁸ *The Employment Act 2002 (Dispute Resolution) Regulations 2004*

and the report deals only with statements from the complainant and the alleged harasser, then the full report should be released to both parties. If the headteacher needs assistance in deciding how much of the report can be shared with the parties, a request should be made to the DSC and LA for advice.

8.24 The headteacher should then:

- explain why no further action is proposed;
- or
- outline what training or other support is to be arranged to ensure that the conduct prompting the complaint is not repeated.

8.25 Mediation may be offered again to both parties. The complainant should be informed of the right of appeal, both at the meeting and subsequently in writing.

9 APPEALS

9.1 Any employee who has made a formal allegation of harassment has the right of appeal. The headteacher will inform the complainant of this right after he/she has decided how to respond to the allegation of harassment and notified both the complainant and the alleged harasser of that decision. The complainant will be required to submit any appeal to the clerk to the governing body within ten working days of this notification.

9.2 The appeal will be to the appeal committee of the governing body.

9.3 The complainant should also be informed that, as part of this policy, he/she may request referral of the case to an independent review body see **Section 10** with a constitution and terms of reference as set out in **Appendix 5**.

9.4 The appellant should be given at least fifteen working days notice in writing of the date, time and venue of the appeal hearing. The clerk to the governing body will advise the appellant of the procedure for the appeal hearing, reminding the employee of the appellant's rights at the hearing, including the right to be accompanied by a friend or representative of his/her choice, and the action which the appeal committee may take.

9.5 The recommended protocol for the conduct of meetings in **Appendix 4** will apply.

9.6 The procedure for an appeal hearing is set out in **Appendix 6**. The appeal committee will have regard to any further guidance issued from time to time on conducting an appeal hearing. At the appeal hearing the appellant will be invited to state his/her case and the

headteacher (or chair of the governing body) will have the opportunity to put the case for the decision taken based on the report of the original investigation. Both employees (the appellant and the alleged harasser or their representatives) will have the opportunity to comment on any new evidence arising during the appeal, including any report of the independent review body, before any decision is taken.

- 9.7 The appeal committee may dismiss the appeal, uphold the appeal or direct the headteacher or the chair of the governing body to modify the action which he or she proposed to take to resolve the grievance.
- 9.8 If it is decided to proceed to a disciplinary hearing, the appellant will be advised that the institution of disciplinary proceedings marks the end of the anti-harassment procedure in this case.
- 9.9 The appeal committee may announce its decision in person to the appellant and the alleged harasser or subsequently in writing as it may determine. An oral announcement shall be confirmed in writing by the clerk to the governing body within ten working days of the hearing.

10 THE INDEPENDENT REVIEW BODY

- 10.1 An appellant wishing to ask for an independent review should do so when submitting the appeal to the clerk to the governing body.
- 10.2 Within five working days of receiving such a request the clerk will refer any request for an independent review to the DSC and LA. If there is to be an independent review, the clerk will delay the appeal hearing until the independent review body has reported, but should notify the members of the appeal committee that a hearing will be required in due course.
- 10.3 If an independent review body is appointed, it should complete its work as quickly as possible, and within the following time-scales: 20 working days for the investigation to be completed and 5 working days to produce the report setting out the findings of the investigation. If the independent review body finds difficulty in meeting these time-scales it should advise the appeal committee, appellant and alleged harasser accordingly, with an explanation and proposals for dealing with the delay.
- 10.4 The independent review body will submit its written report to the clerk to the governing body for consideration by the appeal committee, which will consider those findings together with the report of the original investigation, the decision taken by the headteacher (or chair of the governing body as the case may be), and representations from the appellant and the alleged harasser.
- 10.5 In preparation for the appeal hearing, the clerk to the governing body will send to the interested parties, copies of the original

investigation report and of the independent review body's report. Both reports will have been edited to preserve the rights of third parties under the *Data Protection Act 1998* in accordance with advice obtained from the DSC and LA.

- 10.6 The parties to the case should exchange any written representations they wish to present at the appeal at least five days before the hearing.

11 ALLEGED HARASSMENT OF A HEADTEACHER (INFORMAL STAGE)

- 11.1 Headteachers who are harassed should seek advice from their professional association and from the DSC and LA who will make appropriate recommendations to try to resolve the matter without the need to move to the formal stage of the procedure. However, the decision as to whether or not to move to the formal stage will rest with the headteacher.

12 ALLEGED HARASSMENT OF A HEADTEACHER (FORMAL STAGE)

- 12.1 A headteacher wishing to make an allegation of harassment should write to the chair of the governing body, identifying the harasser and the behaviour which is unacceptable.
- 12.2 The chair will acknowledge the allegation in writing and will immediately seek advice from the DSC and LA and inform the head teacher that he or she will be invited to attend a meeting to discuss the allegation.
- 12.3 The procedure outlined in **Section 8** should be followed as appropriate with the actions taken by the headteacher under that section, being taken in this case by the chair of the governing body.
- 12.4 If the allegation concerns the chair of the governing body, the head teacher should contact the DSC and LA to arrange for the matter to be investigated.

13 ALLEGED HARASSMENT BY A HEADTEACHER (FORMAL STAGE)

- 13.1 An employee wishing to make a formal allegation of harassment against a headteacher should put the allegation in writing to the chair of the governing body. However, if an employee is reluctant to raise the matter with the chair of the governing body, he/she may seek advice in confidence directly from the DSC and LA.
- 13.2 Before doing so, the employee is strongly recommended to seek advice from his/her or professional association or trade union.

- 13.3 The chair of the governing body will inform and seek advice from the DSC and LA who, in conjunction with the chair of the governing body will refer the formal allegation about the headteacher to an appropriate person for the matter to be investigated.
- 13.4 In addition the chair of the governing body will immediately:
- acknowledge the allegation in writing (and refer to the date of receipt) and inform the employee that he or she will be invited to attend a meeting to discuss the complaint;
 - inform the headteacher as the alleged harasser, of the nature of the allegation in writing, explaining:
 - that he/she will be interviewed as part of the investigation;
 - that he/she is entitled to make a written statement;
 - that he/she should contact their professional association or trade union;
 - the possible outcomes of the investigation. See **paragraph 8.15**.
- 13.5 At this point, in consultation with the DSC and LA, the chair of the governing body will consider whether to re-arrange lines of management so that contact between the parties is minimised.
- 13.6 The chair of the governing body will also offer mediation and make the necessary arrangements where this is agreed by both parties.
- 13.7 The procedure outlined in **Section 8** should be followed as appropriate.
- 13.8 At the conclusion of the investigation, the investigator will present his/her findings with a recommendation, to the chair of the governing body, who will consult with the DSC and LA for advice on appropriate action.
- 13.9 The chair of the governing body will then decide what action to take in accordance with **Section 8** above. He/she will notify the DSC and LA of his or her decision in writing.
- 13.10 The chair of the governing body, advised by the DSC and the LA, will then meet separately with the headteacher and the complainant to tell them of the recommendations and proposed actions.
- 13.11 There will be a right of appeal see **Section 9**, including referral to an independent review body if requested, as set out in **Section 10**.

14 ALLEGED HARASSMENT BY A PROFESSIONAL ASSOCIATION OR TRADE UNION REPRESENTATIVE (ON THE STAFF OF THE SCHOOL)

- 14.1 Normal standards of behaviour should apply to trade union or professional association representatives.
- 14.2 In the circumstances of an allegation of harassment by a professional association or trade union representative employed at the school, no action should be taken until the matter has been raised with a full-time official or senior representative of the relevant professional association or trade union.
- 14.3 In exceptional circumstances, where the substance of the allegation is sufficiently serious, it may be necessary to suspend a professional association or trade union representative before contact can be made with the relevant professional association or trade union. In such a case the matter should be raised with an official as soon as possible thereafter, as a matter of urgency.
- 14.4 The procedure set out in **Sections 6-10** (as appropriate) should be followed.

15 SUSPENSION

- 15.1 In certain rare cases where the allegations are deemed to be sufficiently serious, it may be appropriate to consider suspending the individual in accordance with the procedure set out in the school's disciplinary procedures.
- 15.2 It is essential to consult the DSC and LA for further advice if this is felt to be the case.
- 15.3 This does not affect suspension for allegations of gross misconduct under the disciplinary procedure. A decision will have to be taken about the conduct of the investigations under each procedure in these circumstances. It may be that the investigation under the Anti-harassment Policy should be held in abeyance until the outcome of the disciplinary investigation is known.

16 ALLEGED HARASSMENT BY THOSE OUTSIDE THE SCHOOL

- 16.1 See **Appendix 2**

17 CONFIDENTIALITY

- 17.1 At all stages of the procedure, the importance of confidentiality will be borne in mind. Attention will be given to considering what information needs to be shared and the way in which this is done.

This procedure has been agreed between representatives of the Catholic Archdiocese of Birmingham Schools Commission and the teacher organisations listed below:

The Association of Teachers and Lecturers

The National Association of Headteachers

The National Association of Schoolmasters Union of Women Teachers

The National Union of Teachers

The Association of School and College Leaders

Dated 10 February 2011.

APPENDIX 1

HARASSMENT AND BULLYING – DEFINITIONS AND THE LAW

1 DEFINITIONS

1.1 There is a legal definition of harassment⁹.

The Equality Act 2010 defines harassment in section 26 (1) as follows:

'section 26(1) a person (A) harasses another (B) if:

(a) person (A) engages in unwanted conduct related to a relevant protected characteristic, and;

(b) The conduct has the purpose or effect of:

i. Violating person (B's) dignity or;

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for person (B).

(2) (A) also harasses (B) if:

(a) (A) engages in unwanted conduct of a sexual nature and;

(b) the conduct has the purpose or effect referred to in subsection 1(b)

(3) (A) also harasses (B) if:

(a) (A) or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex

(b) the conduct has the purpose or effect referred to in subsection (1)(b) and;

(c) because of (B's) rejection of or submission to the conduct (A) treats (B) less favourably than (A) would treat (B) if (B) had not rejected or submitted to the conduct'

~~It is defined as unwanted conduct 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.~~

1.2 There is no legal definition of bullying. The Advisory, Conciliation and Arbitration Service (ACAS), characterises bullying as 'offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient'¹⁰. Related definitions from other organisations specify that bullying is persistent rather than a single incident.

1.3 ACAS acknowledges that behaviour that is considered bullying by one person may be considered firm management by another. Most

⁹ See Sex Discrimination Act 1975, the Race Relations Act 1976 (and Race Relations (Amendment) Act 2000), the Disability Discrimination Acts 1995 and 2005, the Equality Act 2006, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Age) Regulations 2006.

¹⁰ 'Bullying and Harassment at Work: A Guide for Managers and Employers', (ACAS),

people will agree on extreme cases of bullying and harassment but is sometimes the 'grey' areas that cause the most problems. It is good practice for employers to give examples of unacceptable behaviour in their organisations and this may include:

- spreading malicious rumours or insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief);
- copying memos that are critical about someone to others who do not need to know;
- ridiculing or demeaning someone – picking on them or setting them up to fail;
- exclusion or victimisation;
- unfair treatment;
- overbearing supervision or other misuse of power or position;
- unwelcome sexual advances – touching, standing too close, display of offensive materials;
- making threats or comments about job security without foundation;
- deliberately undermining a competent worker by overloading and constant criticism;
- preventing individuals progressing by intentionally blocking promotion or training opportunities.

2 THE LAW ON HARASSMENT AND BULLYING

2.1 It is not possible to complain to an employment tribunal specifically and solely about bullying. However, aspects of bullying may fall within laws covering discrimination and harassment, or even health and safety at work. Before consideration is given to using any legislation it is important that the employee concerned makes certain that advice is obtained from his/her professional association/trade union.

2.2 Some legislation covers discrimination, others both discrimination and harassment. Harassment includes unreasonably failing to prevent the harassment of an employee by a third party in the course of their employment, if it occurred on more than two occasions (whether or not by the same party) and the employer was aware of it.

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2.22.3 Harassment also includes unwanted conduct 'related to' a relevant protected characteristic, so would cover harassment because of perception and association.

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2.32.4 Much of the legislation deals specifically with employment, providing for citizens to bring common law or civil actions, but the *Criminal Justice and Public Order Act 1994* (see below) deals with criminal offences heard in the criminal courts and involving the Police and Crown Prosecution Service.

2.5 The Equality Act 2010 is a single consolidated source of discrimination legislation covering all types of unlawful discrimination, replacing the existing legislation and extending the protection for employees in certain areas – ‘protected characteristics’. The main provisions came onto force on 1st October 2010 with certain other provisions expected to be phased in up to 2013.

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2.6 The protected characteristics as defined by section 4 of the 2010 Act that relate to harassment are:

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- age;
- disability;
- gender reassignment
- race;
- religion or belief;

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2.7 The default retirement age (DRA) is being phased out over a transitional period running until the 30 September 2011. From this date it will no longer be possible to compulsory retire an employee at 65.

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2.8 Employers do not have to treat people of different ages exactly the same but employees must be treated fairly and consistently ensuring there is not more favourable treatment of an employee because of their age unless it can be **objectively justified to do so as a proportionate response to a legitimate need.** The ACAS guidance calls this the ‘Employer Justified Retirement Age (EJRA)’¹¹

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2.42.9 However employers who wish to use an EJRA need to consider the matter carefully. They will need to ensure that the retirement age meets a legitimate aim; for instance workforce planning or the health and safety of individual employees, their colleagues and the general public. As well as establishing a legitimate aim an employer will also need to demonstrate that the compulsory retirement age is a proportionate means of achieving that aim.

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2.52.10 Under the 2010 Act, disability, is defined as a ‘physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day to day activities’. ~~It The Sex Discrimination Act 1975 (as amended)~~ gives protection against

¹¹ ‘Working without the default retirement age’ – ACAS Guidance for Employers

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discrimination and victimisation and a duty on public bodies to promote equal opportunities for people with disabilities.

2.62.11 Schools, like other public bodies, have a duty to publish a disability equality scheme.

2.12 The *Disability Discrimination Act* concept of '**disability related discrimination**' is replaced by '**discrimination arising from disability**'. There is now no need to show the treatment was less favourable than a comparator. An employer will have a defence if it can be shown that the treatment is a proportionate means of achieving a legitimate aim or the employer did not know and could not have been expected to know that the employee had the disability.

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2.13 For the first time it is possible to have an occupational requirement as a defence to a disability claim.

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2.14 The *2010 Act* imposes a duty for employers to make reasonable adjustments. Employers have a positive duty to treat disabled employees more favourably than non-disabled employees in certain circumstances and the *2010 Act* makes it clear that non-disabled employees will have no claim as a result.

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2.72.15 The *2010 Act* also contains a new duty for employers to provide an auxiliary aid if, without that aid the disabled person would be at a substantial disadvantage. The *2010 Act* extends the duty to auxiliary 'services'.

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2.16 *The 2010 Act The Sex Discrimination Act 1975 (as amended)* gives protection on the grounds of sex, because someone intends to undergo, is undergoing or has undergone gender reassignment. A person does not have to be under medical supervision. Therefore a person who decides to live permanently in the opposite gender but does not actually undergo any medical procedures would still be protected.

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2.82.17 ~~The *2010 Act* makes no changes to the provisions of the *Race Relations Act 1976* and the *Race Relations (Amendment) Act 2000* in-gives protection against discrimination and victimisation on the grounds of race which includes colour, nationality and ethnic or national origins. Tangible job detriment can be demonstrated in case law as with sexual harassment. The *Race Relations Regulations 2003* also protect against harassment on the grounds of race and ethnic or national origin. The *Race Equality Act 2000* imposed the race equality duty on public bodies.~~

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2.92.18 ~~The *2010 Act The Employment Equality (Religion or Belief) Regulations 2003* gives protection against discrimination and harassment on the grounds of religion or belief.~~¹² Unlawful religious

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¹² For the employment position in schools with a religious character, please see schedule 22(3) and 22(4) of the 2010 Act which provides that a person does not contravene the Act by doing anything permitted for the purposes of Section 58(6)

discrimination can include discrimination against another person of the same religion or belief as the discriminator.

~~2.102.19~~ For sexual harassment to be unlawful the complainant has to be able to show that as a direct result of the harassment, or by the reaction to it, he or she has suffered a tangible job detriment. Case law has shown that the stressful working environment created by sexual harassment (or bullying on grounds of sex) may itself constitute a detriment. ~~The 2010 Act imposes~~ ~~The Equality Act 2006 amended the 1975 Act by imposing~~ duties on public bodies to eliminate unlawful discrimination and harassment and to promote equality of opportunity between men and women.

~~2.112.20~~ ~~The 2010 Act~~ ~~The Employment Equality (Sexual Orientation) Regulations 2003~~ gives protection against discrimination and harassment on the grounds of sexual orientation. See **Paragraph 2.6.**

~~2.21~~ Direct discrimination will now occur when someone is treated less favourably than another person **because of** a protected characteristic rather than **on the grounds of** a protected characteristic. This now includes:

- **associative discrimination** – treating someone less favourably because they are associated with another person who possesses a protected characteristic;
- **perceptive discrimination** – treating someone less favourably because they are thought to possess a protected characteristic even if the perception is mistaken and the person does not actually possess that characteristic.

~~2.22~~ Indirect discrimination will now be the same across all the protected characteristics and for the first time extends to disability and gender re-assignment.

~~2.23~~ The 2010 Act no longer requires an employee who feels that they have been victimised to compare their treatment with a person who has not made or supported a complaint under the Act, i.e. there is no need for a comparator. An employee is not protected if they have made or supported an untrue complaint in bad faith.

~~2.24~~ Previously the burden of proof was only reversed in relation to certain protected characteristics. Under the 2010 Act **any** claim involving discrimination, harassment or victimisation because of any of the protected characteristics will be subject to the same reverse burden of proof rule. Therefore once a claimant has established sufficient facts, which in the absence of any explanation, point to the contravention of the 2010 Act having taken place then the onus shifts to the employer to show that they did not breach the 2010 Act.

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or (7) of the SSFA – relating to dismissals and sections 60(4) or (5) – relating to appointments

2.25 Under the *2010 Act* there are two new positive action provisions which apply to all the protected characteristics. An employer may **but is not required to:**

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- take action to alleviate disadvantage suffered by groups who share a protected characteristic;
- take action to meet the needs of people who share a protected characteristic and;
- take action to encourage or enable people who share a particular characteristic to participate in an activity where their participation is disproportionately low.

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2.122.26 The specific positive action provision in respect of recruitment and promotion **is not yet in force.**

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2.132.27 Under the *Health and Safety at Work Act 1974* employers are responsible for the health, safety and welfare at work of all employees. An employee may claim that failure to protect an employee's health, safety and welfare constitutes breach of contract and case law has shown that undue stress at work, possibly caused by harassment or bullying, can affect an employee's health.

2.142.28 The *Criminal Justice and Public Order Act 1994* introduced a new criminal offence of intentional harassment and the *Protection from Harassment Act 1997* extended protection from harassment in civil cases. Further information can be obtained from the Equalities Unit or the LA.

2 RESPONSIBILITIES OF GOVERNING BODIES

- 3.1 In addition to meeting their legal responsibilities governors will aim to discharge their duties in a manner that secures the Catholic ethos of the school and its reputation in the parish, local community and wider educational community.
- 3.2 As the employer the governing body is to be the respondent to any application to an employment tribunal arising out of any of its actions or any action taken by the authority on its direction.
- 3.3 However, provided that the governing body follows the advice of the LA, any award of compensation or costs or other order (other than an order for reinstatement or re-engagement) is to be made against the authority.
- 3.4 The LA may apply to be made an additional party and to appear at any hearing.

APPENDIX 2

ALLEGED HARASSMENT BY PERSONS NOT EMPLOYED BY THE SCHOOL

1 ALLEGED HARASSMENT BY A PUPIL

- 1.1 If there is an allegation of harassment of a member of staff by one of the pupils (or group of pupils) then the headteacher should be informed in order that and he or she will resolve the matter using the school's Behaviour Management Policy.

2 ALLEGED HARASSMENT BY A PARENT OR MEMBER OF THE PUBLIC

- 2.1 Allegations of harassment on staff by parents or members of the public should be referred to the headteacher, who should either address the matter with the parent or member of the public or seek professional guidance from the DSC/LA.
- 2.2 Any person who without lawful authority is present on premises and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises is guilty of an offence¹³.
- 2.3 Governing bodies have the power to authorise the removal from school premises anyone suspected of committing such an offence¹⁴.

3 ALLEGED HARASSMENT BY A PROFESSIONAL ASSOCIATION OR TRADE UNION OFFICER (NOT EMPLOYED AT THE SCHOOL)

- 3.1 Normal standards of behaviour are expected of professional association or trade union officers. However, where an allegation is made the matter should be referred in writing to the DSC and LA who will decide if further follow-up action is appropriate and specifically whether it is necessary to refer the matter formally to a Regional or National Officer of the professional association or trade union concerned.

4 ALLEGED HARASSMENT BY A GOVERNOR AND/OR THE GOVERNING BODY

- 4.1 Complaints against a governor will be referred by the headteacher to the chair of the governing body who, in turn, will liaise with the DSC and/or the LA. Where the chair of the governing body is the subject of a complaint, another member of the governing body (usually the vice-chair) will be designated to liaise with the DSC and/or LA who will advise on what action may be appropriate and, if

¹³ Education Act 1996 Section 547(1)

¹⁴ Ibid Section 547(3)

necessary, arrange for an investigation to take place. All employees should seek the advice of their professional association/trade union.

- 4.2 Allegations against the governing body will be referred by the headteacher to the DSC and LA.
- 4.3 Foundation governors are appointed to the governing body by the Trustees of the Diocese and can only be removed by the appointing body.
- 4.4 All allegations against LA governors will be dealt with by the LA in conjunction with the chair of the governing body and the headteacher
- 4.5 Staff governors are elected to the governing body and cannot be removed but may be suspended for a maximum of six months.
- 4.6 Parent governors who are elected to the governing body cannot be removed but may be suspended for a maximum of six months.
- 4.7 Parent governors who are appointed by the governing body rather than elected can only be removed by the appointing body.
- 4.8 Associate members are appointed by the governing body and can only be removed by the appointing body.
- 4.9 Sponsor governors are appointed by the governing body and can only be removed by the appointing body
- 4.10 Any governor, regardless of category, may be suspended for a maximum of six months¹⁵.
- 4.11 Clerks are appointed by the governing body and can only be removed by the appointing body. Where clerking services are purchased through Service Level Agreements (SLA) from the LA the matter should be referred to the LA.
- 4.12 The LA has the power to issue a warning notice to a governing body where it considers 'that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance' (of pupils at the school)¹⁶. Failure to comply with the notice could result in the suspension of the delegated budget, the appointment of additional governors to the governing body or the replacement of the governing body with an Interim Executive Board.

5 ALLEGED HARASSMENT BY AN EMPLOYEE OF THE LOCAL AUTHORITY

- 5.1 If the alleged harassment comes from an employee of the LA, the headteacher should be informed. The head teacher has a duty to

¹⁵ School Governance (Procedures) (England) Regulations 2003 as amended.

¹⁶ Section 60(2) of the Education and Inspections Act 2006.

refer the matter to the relevant line manager of the person against whom the allegation is made, who will decide what action to take.

5.2 The LA's Anti-Harassment Policy operates in these cases.

APPENDIX 3

GUIDANCE FOR INVESTIGATIONS

1 THE INVESTIGATION

- 1.1 Investigations should be completed within the timeframe set out in **paragraph 8.13** unless there are exceptional circumstances
- 1.2 When a complaint is received or an incident takes place which requires investigation the headteacher will be accountable for commissioning the investigation, receiving the report which should include a summary, conclusions and agreed recommendations.
- 1.3 Where the headteacher is the subject of the allegation of harassment, the actions of the headteacher in **Section 8** will be undertaken by the chair of governors who will receive the report and be responsible for agreeing an action plan.
- 1.4 Key activities undertaken by the headteacher:
 - to take advice from the DSC/LA on the appointment of an independent investigator;
 - to identify and engage an investigator;
 - to consider the suitability of the investigator, including ability, availability, impartiality, training/experience and also to ensure that there are no conflicts of interest, real or apparent;
 - to give a thorough brief (known as the terms of reference) to the investigator;
 - to assist the investigator with access to key documents pertinent to the case;
 - to identify, where necessary, a key person within the school to act as a link for the investigator;
 - to monitor progress of the investigation and ensure timescales are met.
- 1.5 The terms of reference should include:
 - the nature of the allegation/complaint, including details of any specific incidents;
 - any relevant background information;
 - the remit of the investigation (the aspects that need to be investigated and any that should be disregarded for the purposes of the investigation);

- a list of people to be interviewed initially. If there are witnesses to the allegations they should be interviewed by the investigator and will be expected to provide a signed and dated statement. The investigator may decide during the course of the investigation to interview more people. An employee making an allegation of harassment will be encouraged to name witnesses for interview and the investigator must make every effort to ensure such interviews take place;
- any relevant documents that should be considered;
- time limits for the investigation and writing of a report, including interim review dates to ensure that the terms of reference remain relevant as the investigation progresses.

1.6 The responsibilities of the headteacher on completion of an investigation (or the chair of governors where the headteacher is the subject of the allegation of harassment) are:

- to meet with the investigator once an investigation is complete;
- to determine whether he or she is satisfied with the substance of the report, that there is a direct correlation between the report and the conclusions or recommendations and that there is no bias;
- to discuss directly with the investigator any issues requiring clarification or raise any issues if the headteacher is not satisfied with the substance of the report;
- to change the report and recommendations as appropriate;
- to take ownership of the report and be accountable for agreeing an action plan to implement the recommendations, including making arrangements to meet with the complainant to discuss the result of the investigation and any proposed actions;
- to determine whether disciplinary action is appropriate.

2 CONDUCTING AN INVESTIGATION

2.1 Purpose

An investigation is a structured, impartial process of evidence gathering in response to a specific allegation(s) regarding personal conduct. An investigation should be carried out in a manner consistent with the teachings of Christ, embracing Gospel values and Catholic doctrine, and with the terms of reference as described above.

2.2 Following good practice all investigations should:

- have timescales set in advance (as a target completion date rather than a rigid standard);
- be conducted as soon as possible after the matter is raised with the school;
- be conducted by someone with understanding the purpose and distinctive religious character of a Catholic school, the necessary knowledge to understand the situation and implications within the setting of a Catholic school and who also has the necessary degree of impartiality;
- be conducted within the spirit of the school's mission statement with openness and fair play avoiding any bias;
- be conducted using techniques which are sensitive to the individual situation and employees involved;
- be undertaken in a logical and rigorous manner;
- seek to explore rather than pre-judge;
- seek to find out what actually happened rather than arouse emotional reactions on what it is thought happened;
- be initiated and concluded in a timely manner, but not so as to compromise quality;
- be based on a process which is respectful to everybody involved (the complainant, witnesses or individual who is implicated);
- be seen as a learning process where appropriate feedback is given and harnessed for the good of the school.

2.4 The investigator if possible, will have received prior training in investigation skills and techniques and will:

- plan the investigation in order to establish the facts of the case;
- identify and gather relevant documents concerning the alleged incident;
- ensure relevant statements are taken which provide facts concerning the alleged incident;
- produce and present to the commissioning officer a full report of the investigation, the facts established and make recommendations for remedy as appropriate.

2.5 Investigators need:

- to be aware of their own potential biases and assumptions and avoid any preconceived ideas;
- to develop an understanding and/or acceptance that different perspectives exist in the same situation;
- to have an understanding of equality legislation see **Appendix 1**;
- to understand the definition of action which contravenes the school's anti-harassment policy.

2.6 The investigator will need to have terms of reference see **paragraph 1.5** and produce a plan, considering the following:

- Are the terms of reference clear?
- Are the expectations of the complainant clear?
- Are there any policy implications?
- What are the potential equality issues/dynamics?
- Who needs to be interviewed, in what order and where?
- Who will confirm the interview arrangements (including advising interviewees of their right to be accompanied by a representative or friend)?
- Who will ask questions and who will take notes?
- What questions should be asked and not asked?
- What other information will be helpful?

- What is the expected timescale?
- 2.7 The investigator will then conduct structured interviews, see **Annex A** and gather evidence.
- 2.8 The investigator will consider whether it is appropriate to produce statements from witnesses by recording questions and answers. In doing this there will be a need to have regard for confidentiality and the difficulty that may be created if these are made available to all parties.
- 2.9 If statements are taken they must be checked, agreed and signed. **Annex B** gives a suggested format allowing the interviewee to confirm that the account is accurate, make amendments or attach additional comments.
- 2.10 If the interviewee makes changes or comments which the investigator does not recall, a record should be made to that effect on the statement.
- 2.11 The investigator will review and revise the plan as required in the light of emerging evidence and practical considerations.
- 2.12 When collating and analysing the evidence the investigator will:
- consider all the facts and evidence as presented and analyse what can clearly be demonstrated as being factually correct;
 - make judgments on the 'balance of probability', i.e. given what has been found, how likely is it that the action(s) in question have occurred? There is no need to establish the case 'beyond reasonable doubt'.
- 2.13 A suggested format for reports on investigations is given as **Annex C**. Although each report is unique, there are some common rules to follow:
- always include background information on the school in which the incident allegedly took place. The report may be used eventually in an appeal process or by an Employment Tribunal, so it is useful to set matters in context;
 - keep it simple, well structured and rigorously written. Make clear which facts are incontrovertible, i.e. what happened, who was involved, when it happened and where, why and how. Draw attention to any differences in the accounts given of the same event;
 - number documents and statements gathered and for ease of reference use those numbers when referring to them;
 - consider the use of tables to compare the response of witnesses to standard questions. This makes it easy to

absorb evidence and form a reasonable belief regarding the weight of evidence or balance of probability of what actually occurred;

- proof read carefully. Avoidable typing errors, spelling mistakes etc. will reflect badly on the rigour with which the investigation was conducted;
- special consideration must be given when an employee requests access to the report and the report contains information about a third party. There could be a breach of the *Data Protection Act 1998* if information is released about a third party. Simply removing the third party's name from the report may be all that is required, but this is not always the case. A balance must be struck between the right of the individual to access and the right of the third party to privacy. With this in mind it is helpful to write the report in a way that enables it to be issued to all parties. Advice on confidentiality may be obtained by contacting the LA;
- if statements have been taken, there is no requirement to send them out with the report. However, they will still need to be typed, verified and signed so that they are available if there is a request to see or use them at a later date.

3 PUBLISHING THE REPORT

- 3.1 Once completed, the report should be presented to the headteacher for consideration and action as appropriate.
- 3.2 Ensure the report is marked 'Private and Confidential' to ensure that only the headteacher has access to it in the first instance.
- 3.3 The headteacher will meet with the investigator to discuss the report and decide whether to support the findings or whether there are further issues to be explored or clarified by the investigator. Changes can be made to the report and recommendations, in agreement with the headteacher.
- 3.4 The headteacher will then take ownership of the report and ensure that the recommendations in it are carried out.
- 3.5 The headteacher will also be responsible for telling the complainant that the investigation has been completed and what is to happen.
- 3.6 All sensitive information should be treated confidentially and meet the requirements of the *Data Protection Act 1998*. If there is to be a disciplinary case the report will not be released to the complainant, because of the confidentiality of disciplinary proceedings.

ANNEX A – INTERVIEW STRUCTURE

1 INTRODUCTION

- 1.1 Ensure interviews are held in a suitable place, where there will be no interruptions.
- 1.2 After introductions the role of the investigator should be outlined.
- 1.3 Confirm details of the interviewee (name, job title, length of time with the school).
- 1.4 Note the date and time of the interview.
- 1.5 Confirm the name of the interviewee’s representative (if the interviewee does not have a representative or friend, confirm that he or she is aware of the right to be accompanied and give him or her the choice of deferring the interview to another day and obtaining representation in the meantime).
- 1.6 Describe the terms of reference for the investigation.
- 1.7 If a record of the interview is to be made, tell the interviewee and explain that a copy of the record will be sent to him or her for verification.
- 1.8 Ask if the interviewee has any questions before the interview starts.

2 CONDUCTING THE INTERVIEW

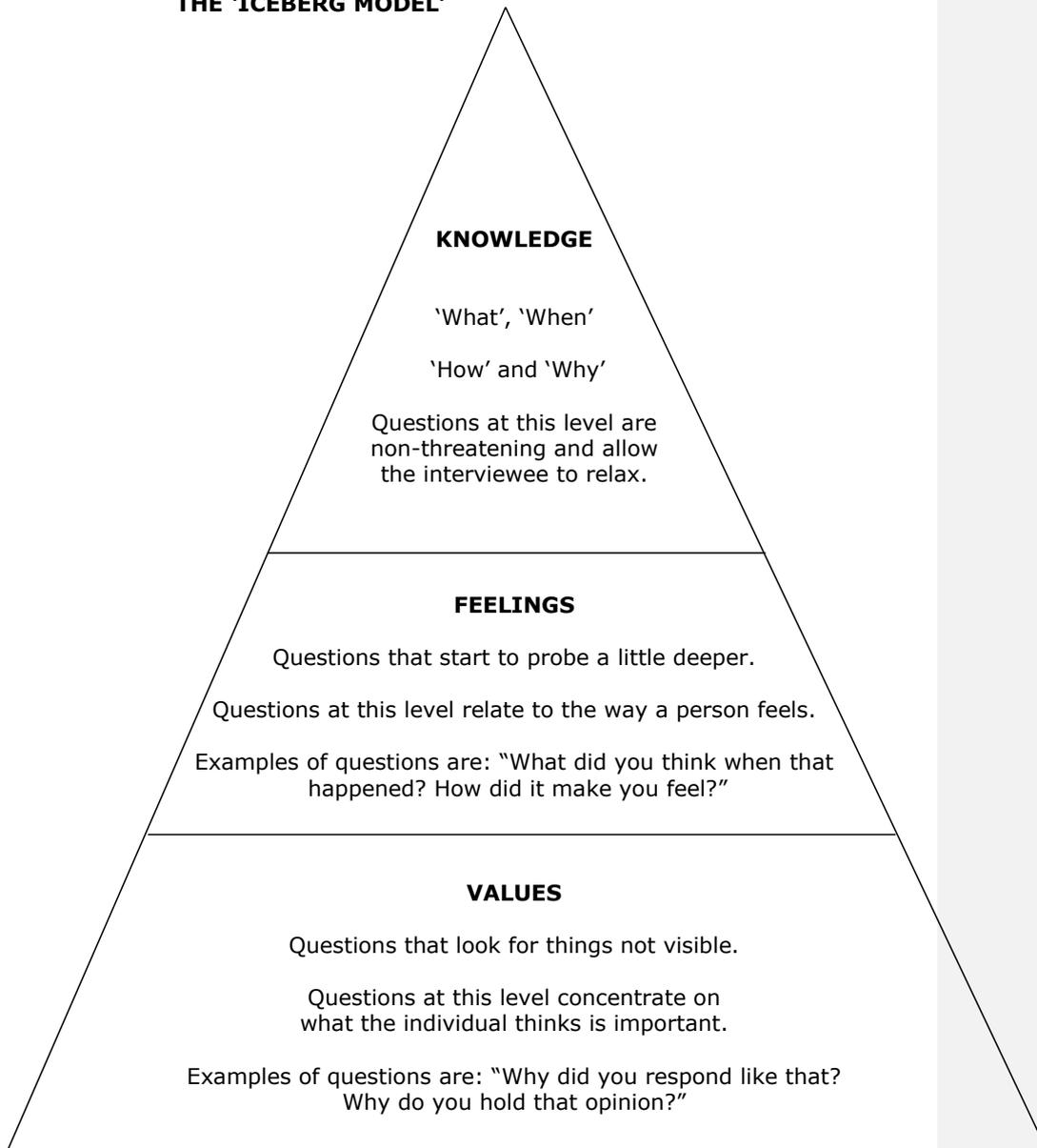
- 2.1 It is vital that any investigation is dealt with sympathetically with due regard to the feelings and emotions of everybody concerned (including the alleged perpetrator).
- 2.2 In cases of grievance or harassment, the complainant should be interviewed first with the aim of obtaining as much detail about the complaint as possible.
- 2.3 Ensure that all persons attending interviews have been notified and informed of their rights to be accompanied by a representative.
- 2.4 Interview all relevant persons using open (descriptive), closed, hypothetical and probing questions as appropriate.
- 2.5 Do not lead interviewees or ‘put words into their mouth’.
- 2.6 Attempt to note accurately what is said and probe for clarification.
- 2.7 Summarise information at intervals to check understanding and manage the conversation.

- 2.8 Repeat what is said when necessary to ensure that there is no misinterpretation.
- 2.9 Ask for demonstrations and diagrams if they can help to get a full picture.
- 2.10 Pay attention to detail.
- 2.11 When the complaint is one of verbal harassment, ask the interviewee to say or write the exact words spoken.
- 2.12 Should any of the interviewees become distressed or aggressive suspend the interview for a short period or terminate it. In the case of termination consider how and when a fresh interview might be undertaken.
- 2.13 In the case of a grievance or harassment, ask the complainant what kind of response he or she is seeking, without making any commitments.
- 2.14 At the end of the interview ask if there is anything in relation to the investigation which the interviewee wishes to mention but which has not arisen during the interview.

3 CONCLUSION

- 3.1 If a record of the interview has been made by way of a statement, confirm that a copy will be sent to the interviewee for verification and signature and indicate how soon the interviewee should return the signed statement. Agree an address for this correspondence (the interviewee might prefer a home address rather than the school).
- 3.2 Explain the plan for the investigation, including the planned date for submitting the report to the commissioning officer.
- 3.3 Explain what might happen after the investigation and any possible consequences for the interviewee.
- 3.4 Ask the interviewee not to discuss the content of the interview and explain the possible consequences if confidentiality is breached.

THE 'ICEBERG MODEL'



ANNEX B – FORMAT FOR A STATEMENT

Name of interviewee:.....

Job title:.....

Length of service – time in job:.....

Name of employee’s representative:.....

Investigator:.....

Place of interview:.....

Date and time of interview:.....

In opening the interview the investigator introduced himself/herself, described his or her role in the investigation, explained the terms of reference, confirmed that a written record would be made of the interview and a copy provided to the interviewee with a request to verify its accuracy, and offered the interviewee the opportunity to ask questions for clarification.

Record of questions and responses

The interview finished at [*insert time*] hours. The investigator said that the report would be submitted within the next [*insert number*] weeks, explained how the outcome of the investigation might affect the interviewee and ask the interviewee to keep the content of the interview confidential.

I agree that this is an accurate record of the interview, or

I have made changes and with those changes agree that this is now an accurate record of the interview; or

I have attached additional comments

Print name of interviewee:.....

Signature:.....

Date:.....

ANNEX C – FORMAT FOR REPORT

TITLE	Investigation into
TERMS OF REFERENCE	As given by the commissioning officer
PURPOSE	To establish the evidence against the allegation(s) – describe the methodology of the investigation
FINDINGS	<ul style="list-style-type: none"> • Background to the case • Outline of the case • Names of those interviewed • Evidence obtained against each allegation • Supporting evidence for the allegation(s) • Any conflicting evidence • Any information obtained about other issues that affect the case
CONCLUSIONS	
RECOMMENDATIONS	

Name of the author of the report:.....

Name of commissioning officer:.....

Date:.....

Supporting evidence attached.

APPENDIX 4

GUIDANCE FOR BEHAVIOUR AT MEETINGS AND HEARINGS

1 INTRODUCTION

- 1.1 Any person attending any kind of meeting or hearing in any capacity has a general duty to act with integrity, objectivity and honesty in the best interests of the school at all times. Drawing on the model of the person, life and teachings of Jesus Christ, all must comply with acceptable professional standards of behaviour and consequently should adhere to the following.
- 1.2 The meeting/hearing will be conducted in accordance with the outline procedure for other meetings at the school unless the committee, headteacher and employee agree variations.
- 1.3 Although this protocol is applicable to conduct within both formal and informal meetings and hearings, the expectation is that the same standards will apply outside of meetings and hearings.

2 BEHAVIOUR

- 2.1 Everyone due to attend the meeting/hearing must make every effort to be punctual in order that the meeting/hearing may begin promptly.
- 2.2 Whilst these meetings/hearings are conducted formally they form part of internal procedures not legal proceedings and therefore all persons present should avoid using legal terminology unless accompanied by an explanation understandable to a lay audience.
- 2.3 All statements, questions and responses must be addressed through the chair.
- 2.4 Each person invited to speak by the chair will be permitted to make his or her contribution uninterrupted by any other person present.
- 2.5 All persons present will act respectfully towards every other person present and will not act in a manner that demeans insults, threatens or intimidates him or her.
- 2.6 All statements, questions and responses must be related to the facts of the case and not be personal in nature. There should be no reference to personal views on any person or in relation to the issue nor should reference be made to previous issues that do not form part of the case under consideration.
- 2.7 If any person present fails to comply with this protocol then the chair will warn him or her that further non-compliance may lead to him or her being asked to leave the meeting/hearing. Any further

breach of the protocol may then lead to the chair deciding that the person should be asked to leave the meeting/hearing or that the meeting/hearing should be adjourned for a period of time to be determined by the chair.

- 2.8 One representative may represent and speak on behalf of a member of staff at formal meetings and hearings. The agreement of the chair is required if the employee wishes to be accompanied by a friend or colleague in addition to being represented professionally.

APPENDIX 5

CONSTITUTION AND TERMS OF REFERENCE OF THE INDEPENDENT REVIEW BODY (SEE APPEALS SECTION 9)

1 THE INDEPENDENT REVIEW BODY (IRB)

- 1.1 The IRB is constituted to review the findings of an investigation of bullying/harassment and shall consist of the following elements:
- the nominee. This person will be nominated jointly by the DSC and LA and will chair any meeting of the IRB and write and present any report;
 - a representative of a professional association/trade union.
- 1.2 Neither member of the IRB should have had prior involvement in the case.
- 1.3 If an allegation is concerned with sex and/or race discrimination the DSC, the LA and professional associations/trade unions should consider the composition of the IRB to ensure the matter can be dealt with sensitively.

2 TERMS OF REFERENCE

- 2.1 The role of the IRB is to consider the basis of the appellant's case to determine whether there is a valid claim that the investigation was flawed, whether new evidence has now emerged, or the conclusions reached were perverse.
- 2.2 It may conclude that the appellant's request for an independent review has no valid basis. It may interview the investigator and others as appropriate. It may undertake a fresh investigation where appropriate, but if it finds simply that there is new evidence it will normally recommend that the original investigation is re-opened.
- 2.3 It is not for the IRB to make recommendations to the appeal committee, simply to set out the facts in relation to the appellant's claim. The IRB has no power to exercise disciplinary sanctions.
- 2.4 If the employee who requested the review refuses to co-operate with the IRB, the IRB will warn the employee that the appeal committee is entitled to take this as an effective withdrawal of the request for a review and, if the employee persists in the refusal, to hear the appeal without reference to the report of the IRB.
- 2.5 In those cases where there is a significant difference of opinion the IRB have the authority to enlist the assistance of a third person to assist with the interpretation of the evidence submitted.

- 2.6 The IRB will submit its written report to the clerk to the governing body for consideration by the appeal committee, which will consider the report together with the report of the original investigation and representations from the appellant and the alleged harasser. In preparation for the appeal hearing the clerk to the governing body will send to the interested parties copies of the original investigation and of the IRB's report (with both being edited to preserve the rights of third parties under the Data Protection Act 1998 in accordance with advice obtained by contacting the DSC/LA).

APPENDIX 6

1 PROCEDURE FOR AN APPEAL HEARING

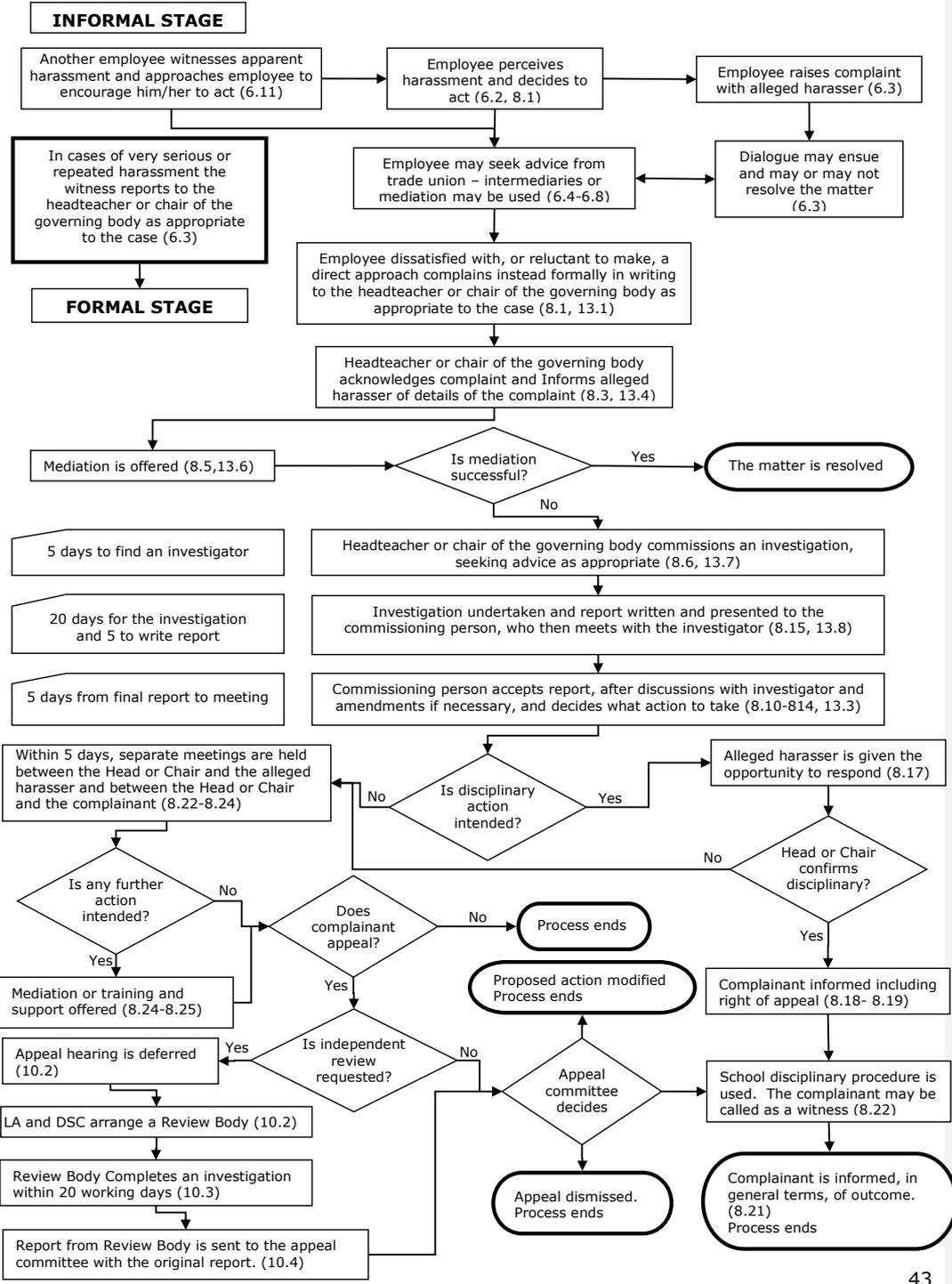
- 1.1 The appellant and his/her representative, the employee alleged to have harassed the appellant and his/her representative, and the headteacher shall attend the hearing simultaneously to present their respective cases.
- 1.2 The chair of the appeal committee will perform the necessary introductions.
- 1.3 The appellant and/or the appellant's representative will present the appeal and may call witnesses.
- 1.4 The headteacher may question the appellant and/or the appellant's representative.
- 1.5 The employee alleged to have harassed the appellant or his/her representative may question the appellant and/or the appellant's representative.
- 1.6 The members of the appeal committee may question the appellant and/or the appellant's representative.
- 1.7 The headteacher will present the original decision taken and may call witnesses.
- 1.8 The appellant and/or the appellant's representative may question the headteacher.
- 1.9 The employee alleged to have harassed the appellant and/or his/her representative may question the headteacher.
- 1.10 The members of the appeal committee may question the head teacher.
- 1.11 The employee alleged to have harassed the appellant and/or his/her representative may respond to the appeal.
- 1.12 The appellant and/or the appellant's representative may question the employee alleged to have harassed the appellant.
- 1.13 The headteacher and/or his/her representative may question the employee alleged to have harassed the appellant.
- 1.14 The members of the appeal committee and the LA's representative may question the employee alleged to have harassed the appellant.
- 1.15 The questioning of any witnesses called will follow the procedure outlined above.
- 1.16 The headteacher will sum up the case presented and should ensure that any advice he or she wishes to give to the committee (and

which a headteacher is entitled to give to a governing body or any of its committees) is given at this stage.

- 1.17 The employee alleged to have harassed the appellant and/or his/her representative will sum up his or her response to the appeal.
- 1.18 The appellant and/or the appellant's representative will sum up the appellant's case.
- 1.19 The headteacher, the appellant and the appellant's representative, and the employee alleged to have harassed the appellant and his/her representative will withdraw from the hearing.
- 1.20 The appeal committee will consider the evidence presented and take an objective decision based on the balance of probabilities.
- 1.21 The committee may recall the headteacher, the appellant with the appellant's representative, and the employee alleged to have harassed the appellant with his or her representative, to clear points of uncertainty on the evidence given, provided that all parties are recalled even if the point of uncertainty concerns the evidence of one party only.

APPENDIX 7

Procedure Flowchart (numbers refer to paragraphs in text)



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