

SOLIHULL METROPOLITAN BOROUGH COUNCIL

Resolution Policy

Schools' version

This policy sets out the terms of agreement reached by those participating in the Council's Consultation and Negotiating Framework.

SMBC can provide information in a range of different ways, for example via the use of audio tape, summarising large documents, interpretation, translation and British Sign Language interpreting services.

If you require this information in an alternative format or need assistance because English is not your first language, please contact your line manager or nominated Human Resources Advisor in the first instance for further support.

For School's (e.g. some Academies) not participating in the Council's Consultation and Negotiation Framework: The school must undertake its own negotiation and consultation with the relevant Trade Union/Staff Association Representatives before this policy is adopted by the School Governing Body. Advice is available from the HR provider on how to undertake this, if required.

RESOLUTION POLICY

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2.0	January 2023	Updates to reflect considerations within a hybrid working context and the Council's position on managing different types of harassment, such as third party and sexual harassment.
3.0	May 2023	Amendments made for schools' version by SSSAB working group Agreed at SSSAB 15/06/23

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Please Note for the Purposes of this Policy where it states School,
if appropriate read Academy

1. Introduction & Background

The school recognises that a positive working environment and good working relationships have a positive impact on employee wellbeing and engagement. A positive working environment can also lead to better performance, improved staff retention and reduced stress related sickness absence.

It is also recognised that conflict in the workplace may occur. In the event that this does happen, we endeavour to support colleagues and managers to work together to resolve any disagreements and conflicts constructively and speedily.

The school will not tolerate staff suffering any abuse or harassment, whether in person or online. It may be more difficult, for example, to observe bullying behaviours or tendencies in a digital environment or as part of a hybrid working pattern, for example noticing if a colleague is upset given the absence of physical clues and in-person interaction. Remote working may offer fewer opportunities for situations to be discussed informally, and this may increase any feelings of disconnect as well as the possibility of misinterpreting messages and communications, which in turn can intensify concerns and lead to fragmented teamworking. Staff are therefore encouraged to raise any concerns as soon as possible in order to avoid matters worsening or escalating. We all have different experiences, backgrounds and perspectives which mean that we often see the world in different ways. This means we can all react differently to situations at work, which can also affect the relationships we have. This diversity of experience and thought should be valued, but on occasions, it can also lead to misunderstanding and conflict between individuals and will consequently need effective resolution strategies.

It can be difficult to give a precise definition of conflict and one person's perception of a difficult situation can differ from somebody else's. Conflict between employees at work can occur across a wide spectrum of behaviour, ranging from a one-off disagreement or 'personality clash' or an ongoing difficult relationship to more serious manifestations of unfair treatment such as bullying and harassment.

The school recognises that these things can happen and if left to fester can create greater tensions between employees. Irrespective of where we work, we aim to create an environment in which people feel that they can say what is bothering them to the person concerned with compassion respect and honesty. This policy is designed with that in mind, in the hope that staff can find a quick and effective resolution to things that are bothering them. We are aiming to create a supportive environment and culture where people feel safe to speak up and have the confidence that they will be listened to with any concerns being addressed appropriately and resolved.

The policy encourages staff to access the appropriate sources of support available and to seek early resolution through a collaborative approach to resolving the dispute. The policy brings the core principles of mediation to the forefront of dispute resolution and encourages constructive resolution at every stage with a focus on keeping potential issues informal, wherever possible, and driving ownership and autonomy for resolution at a local level.

Within Schools, support will be considered as appropriate and in line with the structures and processes of the specific school.

Although it may be preferable to hold certain meetings or discuss sensitive situations face-to-face, under the School's hybrid working practices any of the meetings referenced in this policy

may take place in person or remotely via video conferencing.

Where meetings are to be held remotely, the employee will be made aware in advance that the nature of the conversation is private to allow them time to find a confidential space to take the meeting. It is acceptable to conduct a meeting remotely if the employee has access to and is comfortable using the technology being adopted.

It is acknowledged that an employee may find the experience of being the subject of a complaint or investigation difficult, therefore the school is fully committed to managing the process for resolving issues speedily, fairly, professionally, constructively and in a non-discriminatory way. Appropriate measures of support will be arranged wherever possible to assist an employee in this position, because seeking to understand a situation from different perspectives and appreciating the impact all parties feel increases the chances of an effective resolution.

The purpose of this policy is to explain the school's framework for employees who, during the course of their work may experience differences with colleagues or have an issue, conflict or complaint

The principles in this policy provide necessary instruction and consider, employment legislation, statutory obligations and relevant codes of practice.

2. Scope

This policy applies to all School employees employed on National Joint Council terms and conditions of service, school support staff and Teachers Pay and Conditions of Employment, Soulbury Terms and Conditions, centrally employed teachers. Schools are recommended to apply this policy in relation to all employees under the direct control of Governing Bodies.

The principles outlined in this document will be followed when considering complaints regarding or by senior employees on JNC terms and conditions and Teachers terms and Conditions in the event of a complaint against a Head Teacher for example, though an external investigator may be utilised if appropriate. Complaints from or about agency workers will be referred to the employment agency.

The policy has been developed in accordance with the following legislation and guidance:

- Employment Rights Act 1996
- Protection from Harassment Act 1997
- Equality Act 2010
- Data Protection Act 2018
- ACAS Code of Practice on Disciplinary and Grievance Procedures
- General Data Protection Regulation

This policy can be used for individuals and groups when there is a collective complaint.

This policy is not designed to deal with minor workplace/low-level issues that can arise at any point in many workplace situations and should not be used as a substitute for normal day-to-day discussions, which should ordinarily resolve an employee's issues.

If a complaint is received that could impact another formal employment process whilst it is being undertaken, it may be necessary to suspend the other employment matter in order to, investigate and resolve the complaint. If the issues are unrelated both cases may run in parallel and be addressed simultaneously. Each situation will be different therefore advice should be sought from HR in the first instance.

Employees cannot submit complaints anonymously under this policy because this would affect the balance and fairness of any investigation by preventing the subject of the complaint from responding appropriately to any allegations. Employees should consult the School's Whistleblowing policy for necessary guidance if they wish to remain anonymous when reporting a very serious matter in the public interest, such as an act of wrongdoing, illegality or malpractice. If an employee is concerned about or fearful of possible reprisals from being identified by another individual, they should contact their HR Advisor who will respect the confidentiality around these concerns and advise on an appropriate way forward depending upon the circumstances.

Although employees' confidentiality will be maintained and respected, the school must honour its duty of care and legal obligations, and, therefore, reserves the right, if necessary, in the circumstances, to investigate matters without employees' consent if these pertain to serious issues such as discrimination or abuse.

3. Policy Aims

The policy aims to promote positive employee relations and raise awareness about the damaging impacts of bullying, harassment, and any form of unacceptable behaviour between employees, with the aim of preventing this happening in the workplace. The aim is to create an environment where people feel safe to speak up and have the confidence that any concerns will be addressed satisfactorily.

It aims to secure constructive and lasting solutions to workplace differences and disputes* through a non-adversarial approach to resolving difficult issues and, where appropriate, encourage the use of informal approaches whilst recognising the use of the formal process in appropriate situations.

*Disputes are concerns, problems or complaints that may include differences and disagreements:

- between colleagues
- within or between teams
- between managers and members of their teams
- about the actions or the inactions of the employer about terms and conditions of employment; health and safety; new working practices; the working environment and/or equality of opportunity

For more information, see Appendix A – Definitions

4. Responsibilities

4.1 Line Manager/Headteacher's Responsibilities:

Key responsibilities of line managers include:

- To create a climate of trust, collaboration, honest interactions within the school
- To promote a culture of positive resolution and early intervention of conflict.
- To maintain high standards in their professional relationships and treat all with dignity and respect.
- To encourage all of their team-members to treat everyone with dignity and respect.

- To ensure all workplaces and work practices are supportive and free from bullying, harassment, and unacceptable behaviour.
- To ensure team-members understand that harassment, bullying and unacceptable behaviour will not be tolerated.
- To play an active role in the resolution of a dispute/complaint, supporting employees to resolve matters informally in the first instance.
- To promote, communicate, implement, and monitor the policy and procedure.
- To adopt a neutral position and be open minded when providing advice and dealing with cases.

4.2 Employees' Responsibilities:

- To comply with the Employee Code of Conduct and ensure their behaviour towards colleagues, pupils and parents does not cause offence and could not in any way be considered to be bullying or harassment. Employees should refer to the Performance Management Process and Teachers Standards.
- To recognise differences in culture, attitudes, and social signals can be misinterpreted as bullying or harassment and may be perceived by others as offensive.
- To access support available and let their manager (or other manager/HR if appropriate) know the nature of the complaint and issues promptly, entering discussions in good faith and with the aim of resolving matters at the earliest opportunity.
- Act as a good role model and be sensitive to the feelings and reactions of others and to adjust and/or moderate behaviour as necessary.
- Discourage bickering and unacceptable behaviour by making it obvious that they find such behaviour unacceptable and by supporting colleagues who are experiencing such treatment; bringing to the attention of managers any examples of unfair treatment they have witnessed or strongly suspect is taking place.
- Co-operate during the process and work collaboratively with the line manager, Trade Union representative or Investigating Manager/Officer to resolve any issues informally and at the earliest opportunity wherever possible.

4.3 Appointed Resolution Officer Responsibilities:

- To be an advocate of resolution approaches and behaviours, encouraging a culture of prevention and early intervention.
- To coach and mentor employees, equipping them to have constructive conversations with their line manager or colleagues.
- To be familiar with the appropriate procedures and provide information to employees on the options that are available.
- To listen and provide confidential support to employees that assists them in thinking through the options for resolution of the issues and making a decision on how they want to handle their concern.
- To signpost to wider sources of support available, for example the Employee Assistance Programme.

4.4 Human Resources' Responsibilities:

- To promote a culture of positive resolution and early intervention.
- To mentor, coach and advise line managers/Headteachers/Governors/Resolution Contacts on the interpretation and application of the organisation's approach and policy to resolution.
- To signpost employees to the support available to help them understand all of their options that enable them to make a decision on how they want to approach their concern.
- To guide employees who are the subject of complaints on aspects of the policy and measures of appropriate support when requested.
- To co-ordinate appropriate interventions considered as an effective means of resolving the complaint using appropriately trained practitioners as necessary.
- To provide learning and development opportunities so that managers are knowledgeable and skilled in the diplomacy of approaches to resolution.
- To communicate and engage with the organisation, ensuring that the workforce is positioned to receive and embed the organisational approach to resolution.
- To maintain and review this policy in line with any statutory obligations and legal developments.

4.5 Trade Union Responsibilities:

- To promote a culture of positive resolution and early intervention.
- To be familiar with the appropriate procedures and provide information to employees on the options that are available.
- To listen and provide confidential support to employees that assists them in thinking through the options for resolution of the issues and deciding on how they want to handle their concern.
- To signpost to wider sources of support available for example the Employee Assistance Programme.
- Where requested, to support and advise an employee who is a member of their Trade Union through the informal resolution process. Represent member at the formal stages of the process as appropriate.

4.6 Governing Body and School Leader Responsibilities (in addition to 4.1 above)

- In the event of an allegation of discrimination, harassment or bullying against a Headteacher, the Chair of the Governing Body shall inform and liaise with the Director of Children's Services on the complaint in maintained schools and in Academies they will follow their agreed complaints procedure.
- To ensure the policy is ratified by the Governing Body, communicated to all staff and implemented at the school.
- To hear cases and any appeals arising from the implementation of the policy as appropriate.
- To ensure the Headteacher, or appropriate and suitably trained senior member of staff, carries out their responsibilities in accordance with the policy.

5. Exclusions

Employees cannot use this policy and procedure for the following:

- To raise counterclaims against action taken under the school's other procedures, e.g. capability, disciplinary, management of change or flexible working procedures. Any such

representations should be raised as part of these proceedings and managed through a single process (normally the relevant policy's appeals process). The only potential exclusion to this is where the matter relates to alleged bullying, harassment or discrimination.

- Bringing the same, or a similar, complaint within six months of the completion of the previous resolution process unless:
 - further, new examples are provided.
 - further incidents occurred; or
 - agreed actions have not been implemented.
- To raise issues associated with the school's other policies for example Performance Development Review Framework, appraisal, management of change (unless the matter relates to alleged bullying, harassment, or discrimination within the process).
- Dealing with complaints under the school's Pay Policy (as there is a separate process for dealing with teachers' concerns regarding pay).
- Where the issue involved is the subject of (or is more appropriately dealt with under) a collective procedure between the Council/School or Academy Trust and the trade unions.
- Salary gradings and differentials as well as matters pertaining to tax, national insurance, and pensions.
- Matters over which the Council/School/Academy as an employer has no control.

Please note the above is not an exhaustive list; each complaint will be considered on its own merit and the prevailing circumstances.

The Council/School/Academy reserves its right not to hear a complaint in certain exceptional circumstances, an example of which may be:

once a complaint has been raised formally and the employee does not wish to proceed further at any stage in the process, then it will not be investigated further unless the line manager/Headteacher considers the complaint is sufficiently serious enough to justify this. It would not be appropriate to raise the same complaint or a substantially similar complaint at a later date if a closure decision is reached.

It is necessary to consider the possible motives for a complaint if it is regarded as unfounded following an investigation. A complaint can be determined by an individual's personal interpretation or perception of a situation; therefore it may not always be fair to presume an unfounded complaint is vexatious or malicious in nature. However, if there is a reasonable basis to assume the complaint could be spurious, vexatious, or malicious formal disciplinary action may be instigated. This decision can be taken by the manager hearing the complaint upon presentation of the complaint or following either a formal meeting or an appeal. An employee who submits a complaint in good faith will be protected from victimisation.

See the Disciplinary Procedure for further information.

A complaint should be raised at the earliest opportunity and no later than three months from the date of the incident that resulted in the employee feeling aggrieved.

5.1 Post Employment Complaints

Wherever possible a complaint should be dealt with before the employee leaves employment.

Where an employee raises a complaint after they have left employment (for example through the exit interview process) a modified procedure may be used to explore the concerns raised. Advice should be sought from your HR Advisor in these instances.

6. The Approach and Resolution Process - Overview

The school recognises that it can be difficult to deal with differences at work and start a conversation or raise a complaint whether on an informal or formal basis.

The school's approach in the first instance will be to respond to an issue raised informally and encourage employees to access appropriate sources of support available so the issue can be managed in the most appropriate way at the earliest opportunity. Please refer to Appendix B for a flow chart of how the informal process works.

Help and support to resolve disputes informally may include:

- Seeking support from a Resolution support officer identified within school
- Seeking advice from Human Resources
- Seeking support from the Trade Union
- Exploring options for mediation where informal resolution has been ineffective in resolving the issue or complaint

Advice and support can be sought from a colleague including a Resolution support officer, Human Resources and the Trade Union at any time.

The school actively encourages employees to resolve issues informally in the first instance and only uses formal procedures as a last resort. It should be possible to overcome several issues informally and agree with an employee the best way to handle a situation without involving many other people or undertaking detailed investigations. However, there are some circumstances where an employee may feel that an informal approach would not resolve the matter, and it may be difficult to deal with the issue at hand informally if a wider concern needs to be managed. Furthermore, an issue may be sufficiently serious to warrant a formal investigation straight away, for example, because of potential legal or criminal implications arising from allegations or instances of abuse or discrimination. The manager who has been informed of a complaint will have a conversation with the employee to agree the most appropriate way forward and will be guided by a HR Advisor.

Formal resolution will also be appropriate in the following situations:

- Formal investigation
- Where informal approaches to resolution have been exhausted and the matter remains unresolved

7. Informal Resolution Process

If an employee is experiencing difficulties, a conflict at work or has been subjected to unacceptable behaviour, this should be dealt with locally at the earliest possible opportunity, ideally through the employee raising and discussing it with the person involved, providing they feel comfortable.

Advice and support on how best to resolve the situation can be sought from Human Resources, the individual's line manager or Trade Union. In many cases, this may resolve the issue without taking any further action and a constructive way of working together in the future can be agreed.

If this approach is not successful, or if the employee experiencing the problem feels unable to take steps to resolve the issue themselves, then they should inform their manager of the situation as soon as possible.

All managers have a key role to play in resolving any issues that are raised under this policy and are expected to play an active role in dealing with any incidents involving unacceptable behaviour or concerns that are brought to their attention, seeking advice and support from their HR Advisor as appropriate. If the employee perceives that the concerns relate to the line manager, then the employee should raise the matter with the next level of manager. . In schools if this relates to the Head teacher the Chair of Governors would be the next level of management.

The manager should meet with the employee to discuss the situation with them informally. The aim of the meeting is to establish: the circumstances; the impact that the employee considers it has had; any steps that they may have already taken to address the situation; and what resolution they are seeking. Employees are encouraged to keep their own record of any examples of unacceptable behaviour that can support their complaint during these discussions.

The manager should then seek to agree a course of action with the employee, which may involve speaking to other parties to resolve the dispute/complaint, facilitating a conversation between both parties. Wherever possible, resolution will be sought through informal means.

As the approach is informal at this stage, representation will not normally be appropriate at this meeting.

7.1 Mediation

If following discussion with the manager, or another manager as may be appropriate, the concerns raised involved interpersonal conflict it may be appropriate to explore options for mediation between the parties as part of the informal process.

Mediation is a recognised approach to support managers and staff working together to resolve disputes and conflicts at a local level by maintaining a high level of morale and performance.

Mediation is a confidential process whereby an impartial third party (a trained and qualified mediator) assists individuals or groups who have a dispute and/or where there is a breakdown in the relationship. Mediation gives the individuals involved the opportunity to explore the underlying causes of the issue(s) and encourages the parties to identify a resolution for themselves. The process is based on the principle of problem solving, but with a strong emphasis on the future, by building and restoring relationships.

Most disputes are suitable for mediation. However, participation in mediation is voluntary and will only proceed with the agreement of all parties. It is, however, hoped that employees will recognise the benefits of seeking to resolve issues through mediation and will be amenable to and co-operate with this approach.

If an offer of mediation is not accepted, it will be necessary to explore the reasons for not pursuing this approach and the formal procedures may be used to progress the matter. To arrange a referral for the appointment of a mediator and to obtain guidance on the mediation process, the manager involved should consult their HR Advisor. Please be aware that mediation will almost certainly involve a cost to the school.

8. Formal Resolution

The School is aiming to create a culture where differences can be resolved informally wherever possible, so no formal action will be taken without prior consideration of the potential for informal resolution. Please refer to Appendix C for a flow chart of how the formal process works.

Where attempts to resolve matters informally have been unsuccessful, it may be appropriate to commence the formal resolution stage of this policy. Advice should be sought from your HR Advisor.

If the behaviour or matters involved are determined by the manager to be sufficiently serious to be dealt with formally, it may be appropriate to commence the formal resolution stage of this policy, or in exceptional circumstances it may be appropriate for the matter to be managed through the Disciplinary procedure. Advice in this regard must be sought from your HR Advisor. Please also see the Disciplinary Policy and Procedure for further information.

The employee should clearly set out their complaint or concern in writing to their immediate manager and include:

- The full details of the complaint or concern.
- The outcome or solution acceptable to the employee; and
- Any steps already taken to raise and resolve the complaint or concern, clarifying why any informal measures were considered ineffective or inappropriate.

Where the complaint or concern is with their manager, it should be raised in writing with the manager's immediate line manager. The appropriate manager will write to the employee acknowledging the complaint and will also arrange a meeting with the employee as soon as reasonably practicable and, where possible, within 10 working days from receipt of the written complaint. The meeting should occur without delay if a mutual agreement is reached to address the matter within a shorter timeframe.

The employee has the right to be accompanied by a trade union representative or by a work colleague of their choice at all stages of the Formal Resolution procedure; however, it is their responsibility to arrange this representation. Exceptions to this requirement may be acceptable in particular circumstances in order to accommodate a reasonable adjustment, for example an advocate or carer, to support an employee with a disability, where appropriate. Guidance should be sought on this issue from Human Resources beforehand. Witnesses are not entitled to be accompanied however, the provision may be offered if requested and will not be unreasonably withheld.

If it is not possible for the employee's chosen representative to attend, the meeting will be rescheduled once to take place within 5 working days of the original arrangements. The employee will be required to find an alternative companion or attend alone if their chosen representative remains unavailable.

A meeting will only be rearranged once within 5 working days in any instances where the employee fails to attend. The employee will need to present a justifiable reason for not attending and also confirm if they intend to proceed with their complaint. If the employee is unable to attend a rescheduled meeting, a decision will be made based on the evidence available at the time, with advice provided by the HR Advisor.

8.1 The Formal Resolution Process

The appropriate manager/Governor hearing the complaint will arrange a formal resolution meeting with the employee as soon as reasonably practicable and, where possible, within 10 working days from receipt of the written complaint.

It is good practice to agree the time and date of the meeting with the employee and, where appropriate, their representative. The purpose of the meeting is to allow the employee to explain their complaint, how they think it should be settled and why any action taken at the informal stage was unsatisfactory.

Following the meeting, the manager must send a written response to the employee of the outcome as soon as reasonably practicable and, where possible, within 5 working days of the meeting. The employee must be advised of the right to progress to the Appeal stage of the formal resolution procedure in the outcome letter, and any such request must be lodged by the employee in writing within 5 working days of receipt of the outcome letter.

Under some circumstances, it may become necessary to investigate the issues raised by the employee before the complaint can be fully considered. See Section 8.2. Other potential outcomes from the meeting include, but are not limited to, upholding the complaint, rejecting the matters that have been raised, agreeing to a recommendation to undergo mediation or managing to reach a compromise.

An HR Advisor not already involved in the case may also attend the meeting.

8.2 Formal Investigation

Where it is necessary to undertake an investigation, this will be conducted by a neutral manager/Investigating Officer who has no prior knowledge of the situation. Advice should be sought from Human Resources in this regard. Any matter that is reasonably suspected or believed to contravene any of the school's policies or the Employee Code of Conduct will be investigated promptly and thoroughly.

The employee making a complaint, and where an employee is the subject of a complaint, will be informed as soon as possible of the facts of an investigation and when it has been concluded. This can be done face-to-face, and the investigation findings will also be confirmed in writing. In exceptional circumstances, the evidence given by individuals may have to remain confidential. Where confidentiality is necessary, this will be explained, and an appropriate summary of the evidence gathered will be given.

Investigating Officers will avoid unnecessary delays and seek to complete investigations within a reasonable timeframe but will be led by the nature and complexity of the relevant matters. Once the scope of an investigation has been determined, relevant parties (the complainant/s and the subject/s of the complaint) will be advised of the anticipated completion date by the Investigating Officer, who will also provide updates around the progress of the investigation during the interim. If an investigation does not conclude by the anticipated completion date, relevant parties will be notified accordingly of the reasons at agreed intervals by the Investigating Officer, and the manager who commissioned the investigation will be contacted by a HR Advisor with an update around when the process is due to finalise. Employees should liaise with their line manager or a grandparent manager if necessary for access to appropriate support measures while an investigation is ongoing

Investigating Officers will ensure that other protocols are followed, when necessary, for example the Audit Protocol or when there is a safeguarding matter or police investigation. In such cases, HR should be contacted for advice.

The employee who raised the complaint is expected to fully co-operate with the investigation process, including attendance at investigation meetings and, if required, a formal hearing. Employees should be listened to in a non-judgmental way because they may be upset during the meeting, however they should avoid discussing any issue that is unrelated to the complaint because this approach will prevent the process from being concluded in an appropriate and timely manner.

Communication with the employee must be maintained throughout the course of the investigation, ensuring that they are signposted to means of support if appropriate. Regular progress updates must be given to all parties, including the employee who the complaint has been made against.

In cases of bullying and harassment, if appropriate and wherever possible, the Council/School will try to ensure that the employee complaining of harassment or bullying, and the alleged harasser are not required to work together while the complaint is under investigation. This could involve giving the employee complaining of harassment or bullying the option of working from another location temporarily to reduce contact with the individual being investigated.

In the case of serious allegations, the school may suspend any employee who is under investigation for harassment or bullying for a temporary period while investigations are being carried out and proceedings are underway. A suspension risk assessment (This can be found in the Disciplinary Procedure) will be undertaken in such circumstances. Suspension will be for as short a time as possible and will be on full pay. HR must be involved if suspension is being considered.

The principles in this policy apply to collective complaints, though one employee will be identified as a nominated representative eligible to attend a collective meeting. There may be variation in the way different employees would prefer a matter to be addressed, even if they all share the same concerns, however one identical outcome will be confirmed following the investigation. The nominated representative will be informed of the outcome and any resulting actions which may follow.

8.2.1 Formal Investigatory Interview

Depending on the circumstances of the case, the employee who is the subject of the complaint may be invited to attend an investigatory interview. The employee will be made aware of the full allegation/complaint, if not disclosed prior to this interview. It is the employee's responsibility to ensure they inform their work colleague or trade union official if they wish for representation at the interview.

8.2.2 Recording of witness statements & investigation meetings

A written record will be made of all interviews undertaken. Where the investigation is undertaken by Audit, this will be conducted via an audio recording made by the Investigating Officer. After the meeting, the Investigating Officer will arrange for the recording to be transcribed and a copy will be provided to the employee, wherever possible. It would not be appropriate to forward a copy if details concerning children or vulnerable people are included in the recording.

All parties interviewed including witnesses will have prior notification that audio recording will take place.

All data recorded will be handled, stored, and destroyed in accordance with the school's data protection guidelines.

Audio or visual recordings of proceedings by the employee or their representative are not acceptable at any stage of this process. The employee, or any person acting on their behalf, is not permitted to covertly record any informal or formal meeting held by the school. Any breach of this provision may lead to disciplinary action against the employee, up to and including dismissal. This is on the basis that we expect employees to be open and honest and to treat colleagues with dignity and respect, and making secret recordings undermines trust between individuals. Anyone making such recordings in contravention of this would also be personally responsible for any breach of Data Protection legislation. There is a potential that the use of non-covert audio recording devices may be allowed as a reasonable adjustment to accommodate a health condition or disability where previously deemed appropriate by Occupational Health or an employee's GP/Medical Practitioner; this will be with the express consent of everyone present. Please also refer to the School's Video Conferencing Guidelines and Electronic Communications and Guidance.

8.2.3 Formal Investigation Outcome

Following investigation, the manager concerned, together with a HR representative, will determine whether any further action should be taken based on the evidence gathered by the Investigating Officer.

The outcome of the investigation is likely to be either:

- The allegations made are upheld (in full or in part)
- The allegations made are not upheld
- The allegations made are deemed to have been made maliciously (in which case the matter may be referred to the disciplinary procedure for appropriate action to be considered)

The outcomes, reasons for the decision and any recommendations following any investigation will be communicated by the manager to the employee. The manager will arrange to meet with the employee as soon as reasonably practical and, where possible, within 10 working days of the completion of the investigation. It is the employee's responsibility to ensure they inform their work colleague or trade union official if they wish to be accompanied at the outcome meeting.

The manager may be advised at the meeting by a member of HR, where appropriate. It may also be appropriate, in some cases, for the Investigating Officer to be present at the meeting. The manager hearing the complaint will determine if this is required. Advice from HR should be sought in this regard.

For reasons of confidentiality and the need to avoid or minimise any potential impact on colleagues who may have been party to the investigation, it may not be appropriate for the Investigating Officer's report to be released, but the main findings in the report will be shared with the employee at the meeting and documented as part of the outcome letter. The manager will follow up the outcome of the meeting with a letter, including the right of appeal available to the employee.

It may also be appropriate to consider (or reconsider, where this has already been explored at the informal stage of the process) mediation at the end of a formal process to support parties in understanding their issues and to move forward constructively together; this will be a consideration of the manager hearing the complaint.

Where an employee is the subject of the complaint, the outcome of the investigation will be shared with the complainant and the subject of the complaint, in so far as it is appropriate

because it would not be acceptable to divulge information that could breach any confidentiality and therefore be to the detriment of an individual. **The outcome of the complaint would not be discussed with witnesses or others interviewed as part of the investigation.**

Any employee accused of harassment or bullying will be informed of the complaint against them and afforded a full opportunity to challenge the allegations and put forward an explanation in response during a confidential interview, with a work colleague or trade union representative present if they wish. The employee will also be made aware of the outcome of the complaint against them once the process is complete.

9. Appeal

If the employee who made the complaint is dissatisfied with the outcome of the investigation, they can appeal to a senior manager. Where a senior manager has been involved at an earlier stage, and where practicable and appropriate, a more senior manager will be appointed. In schools, this will be determined by the governance arrangements for hearing appeals.

The employee should present their appeal using the form in Appendix D. A copy of the form should be sent to the hearing manager and must also be sent to the appropriate HR Advisor, to be received within 5 working days of receipt of the outcome letter.

9.1 Purpose of the Appeal

The appeal hearing **will not** normally rehear all of the evidence presented at the formal resolution meeting or investigation outcome meeting unless otherwise decided by the chair. Its purpose is to examine the grounds of appeal that the employee has raised to consider the grounds and to remedy any decisions considered to be inappropriate. The appeal must be in writing and the employee must be clear, specific and, thorough about the written submission for their grounds of appeal.

New evidence will not be considered unless, the employee can demonstrate that it may significantly affect the previous decision process and it has come to light since the Formal Resolution/Outcome meeting or was impossible for the employee to produce at the first meeting.

Witnesses do not normally attend an appeal hearing unless they are presenting:

- new evidence, or
- their evidence at the first meeting was not taken into account.

It is up to the Chair of the appeal hearing to agree that the attendance of witnesses is relevant to the case. If a Chair refuses the attendance of a witness, they must explain their reasons for doing so to all parties concerned.

9.2 Grounds of the Appeal

There are a number of potential grounds for appeal and the most frequently cited are listed below, however the list is not exhaustive:

- The decision taken at the formal resolution/outcome meeting was inappropriate;
- The Chair taking the decision was biased;
- The proper procedure was not followed; or
- New evidence has come to light.

9.3 The Appeal Hearing

The appeal will be heard by a manager and member of Human Resources who have had no previous involvement in the case. A meeting will be arranged as soon as reasonably practicable; and, where possible, within 10 working days of receipt of the written appeal. The employee may be accompanied by a work colleague or Trade Union representative. If an alternative companion is requested to support an employee with a disability or if an employee's nominated representative is unable to attend the appeal hearing, appropriate consideration will be given in accordance with the requirements outlined in Section 8 of this policy.

If the employee fails to attend the hearing, it may continue in their absence, unless a reasonable explanation for non-attendance has been provided to the panel and approved by the Chair. In such cases, arrangements will be made to reconvene the hearing within 5 working days. A second occurrence of non-attendance will result in the hearing being held in the employee's absence unless sufficient justification for not doing so has been authorised, by the Chair.

Following the meeting, the employee must receive a written response detailing the outcome as soon as reasonably practicable and, where possible, within 5 working days of the meeting. The decision from the manager hearing the case will be the final response from the School.

The subject of a complaint will be notified of the outcome of an appeal where a decision has been overturned following an initial hearing into a case and a new outcome has been confirmed.

No further internal right of appeal will be made available.

10. Equality Considerations

Managers/Headteachers should ensure that an employee is not treated less favourably because they have raised or supported a complaint under the Resolution procedure. Consideration must be given to the provision of language and interpreting services where English is not the first language of an employee. Any reasonable adjustments must be made to support an employee with a disability during the process. Please also refer to Appendix A for details of how discrimination can be unlawful because of a 'protected characteristic' under the Equality Act 2010.

11. Data Protection

The Council/School processes personal data collected during informal complaints and the formal Resolution procedure in accordance with its data protection policy. In particular, data collected as part of informal complaints and the Resolution procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of responding to the complaints or conducting the Resolution procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Council's/School's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the Council's/school's disciplinary procedure.

12. Support for employees

(Academies will need to insert the details of their own EAP service here).

All parties involved in a dispute may find themselves in an unpleasant and potentially stressful situation. SMBC Maintained schools offer all employees access to the Employee Assistance Programme (EAP). This is an employee benefit designed to help employees to deal with personal and professional problems which could be affecting their home or work life, health, or general wellbeing. The programme is run by an organisation called Health Assured.

This is a confidential facility that will provide information, expert advice and structured counselling by telephone 24 hours a day, 7 days a week. The service gives employees a place to turn to for support any time of day or night, 365 days a year.

To use the confidential service, you can contact the freephone number 0800 028 0199, the email facility on their website or via the instant web chat facility via the website www.healthassuredeap.co.uk using the following login details:

Username: Solihull

Password: MBC

There is also '**My Healthy Advantage' Mobile App** and an Online Health & Wellbeing Portal which offers employees access to online webinars, factsheets, and tailored programmes online, allowing them access to support independently, or alongside their counselling support. The My Healthy Advantage' app provides an enhanced set of wellbeing tools and features designed to improve your mental and physical health by using personal metrics to set goals and achievements. It is available on the Apple Store and Google Play store, and you will need to use the **employer code which is MHA109491**.

The EAP helpline is also available to line managers to offer support when dealing with challenging managerial situations. Their advisors do not advise on HR policies and procedures but can provide a facilitative and supportive space to help assist them with complicated or difficult issues. Some managers may want to rehearse a conversation, talk through how their own issues are impinging on a work problem or voice concern about their ability or confidence to manage a workplace conflict or difficulty. To use the service, managers can contact the freephone number **0800 028 0199**.

There can be times when additional support is needed for employees and managers alike. Experienced, professional counsellors are available and can determine appropriate resources, and help with the next steps. Where there is deemed to be a clinical need, up to 6 face-to-face or telephone counselling sessions can be offered to employees.

Details can be found on the internet.

- ACAS offers advice and information on a wide range of workplace issues to try and help employees and employers to solve their problems at work. This includes providing information on rights at work, changes in employment law and the best way to develop positive and productive working relations.
- EASS (Equality Advisory Support Service). This is a helpline to advise and assist individuals on issues relating to equality and human rights.
- EHRC (Equality and Human Rights Commission). This is an independent government service that provides information, advice and support on equality and rights at work.
- Citizens Advice Bureau. This service provides free advice on issues affecting people's lives, work, benefits, debt and money, family and housing.
- **Trade Unions**. If you are a Trade Union member, you can seek help and guidance from your Trade Union Representative.

Definitions

Grievance

A grievance is a concern, problem, or complaint that employees can raise with their employer. Grievances may be concerned with a wide range of issues, including the allocation of work, your working environment or conditions, the opportunities that you have been given for career development or the way in which you have been managed. Employees should have reasonable grounds before making a complaint.

Discrimination

The contribution of all individuals should be valued and respected. All aspects of employment practice, such as recruitment and selection, performance management and promotion shall be based on an assessment of the individual's capabilities against criteria that are relevant to the work they are required to undertake. Basing judgements on protected characteristics or status unrelated to the individual's ability to perform his or her work amounts to unfair discrimination, is unacceptable and, potentially, illegal.

The Equality Act 2010 makes discrimination unlawful because of a protected characteristic. The protected characteristics under the Equality Act are:

- Age.
- Disability.
- Gender reassignment.
- Marriage and civil partnership.
- Pregnancy and maternity.
- Race.
- Religion or belief.
- Sex; and
- Sexual orientation.

Part-time workers are also entitled not to be treated less favourably (in terms of wages, overtime pay, contractual holiday and other benefits) than comparable full-time workers under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

Fixed-term employees have the right under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 not to be treated by their employer less favourably than a comparable permanent employee.

Employees who are members of a trade union have the right not to be discriminated against or victimised on the grounds of their union membership or their participation in union activities under the Trade Union and Labour Relations (Consolidation) Act 1992.

Direct discrimination

Direct discrimination will occur where a person is treated less favourably than another person because of a protected characteristic they have or are thought to have (perceived discrimination) or because they associate with someone who has a protected characteristic

Indirect discrimination

Indirect discrimination will occur when you have a condition, rule, policy or practice that is applied to everyone, but particularly disadvantages people who share a protected characteristic and it cannot be shown that the particular provision or criterion, is a proportionate means of achieving a legitimate aim. A legitimate aim might be any lawful business decision made. Being

proportionate means being fair and reasonable, including showing that 'less discriminatory' alternatives to the decision made have been considered.

Bullying

Bullying at work involves a single or repeated negative actions and practices that are directed at one or more workers. The behaviours are unwelcomed to the victim and undertaken in circumstances where the victim has difficulty in defending themselves. The behaviours may be carried out as a deliberate act or unconsciously. Bullying is offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power that is meant to humiliate, injure or control the person subjected to it. Bullying can be physical, verbal or non-verbal. It can include physical violence, obscene gestures, public humiliation or more subtly, impossible deadlines, menial tasks or withholding information. It is not necessarily face to face and can be done through many ways, for example by email, during phone calls, online (cyber-bullying) or on social media. Bullying may occur at work or outside work, for example during social events outside normal working hours, and even in non-related working situations if consequently an adverse effect on a working environment is apparent.

Bullying can also involve behaviour which belittles or ridicules or is intimidating or physically abusive to an employee.

- Bullying can result from misuse of any form of individual power such as physical strength, personality or age, or collective power through strength of numbers. Bullying is where someone or a group of people in a position of strength, authority or responsibility abuses their individual power by using intimidating insulting or malicious behaviour. Collective bullying will be treated as victimisation and may be considered as gross misconduct.
- Bullying is persistent, destructive behaviour that has a detrimental impact on a person's confidence and self-esteem. Bullying can be colleague to colleague, employee to manager, as well as from manager to more junior members of staff (including temporary, agency workers and contractor staff).

Harassment

Harassment is unwanted conduct related to a relevant protected characteristic (a list is provided above), which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for that individual. An employee can complain of behaviour that they find offensive even if it is not directed at them and the complainant need not possess the relevant characteristic themselves.

Conduct may be harassment whether or not the person behaving in that way intends to offend. The defining principle is whether the behaviour was unacceptable by reasonable, professional standards of behaviour and is disadvantageous or unwelcome to the person/people subjected to it. However, the alleged harasser's intention is relevant to understanding the impact of their behaviour and in choosing the most effective way to try to resolve the situation.

Something intended as a 'joke' may offend another person. Different people find different things acceptable. Employees have the right to decide what behaviour is acceptable and to have their feelings respected by others. Behaviour which any reasonable person would realise as likely to offend will be harassment without the recipient having to make clear in advance that behaviour of that type is not acceptable, e.g., sexual touching.

It may not be so clear in advance that some other forms of behaviour would be unwelcome to, or could offend, a particular person, e.g., banter, which will not be considered as justification for unacceptable comments or behaviour, flirting or asking someone for a private drink after work. In these situations, first time conduct which unintentionally causes offence may not constitute

harassment though it will be considered so if the conduct continues after the recipient has made it clear, by words or by action, that such behaviour is unacceptable to them.

A pattern of behaviour or a single incident can be considered harassment if it is sufficiently serious, though many different forms can arise and not all are easily recognisable. All reasonable steps will be taken to prevent harassment. Disciplinary action, up to and including dismissal, will be initiated to address any instances of harassment, and where appropriate criminal proceedings may also apply.

The school acknowledges the physical and mental health effects suffered by those affected. Arrangements should be in place to assess the risk of harassment and abuse and the thorough recording processes for incidents involving abuse or harassment need to be maintained.

Sexual harassment

Harassment may be sexual in nature and the Equality Act 2010 specifically outlaws' sexual harassment as a means of unlawful discrimination. Sexual harassment can be defined as:

conduct of a sexual nature that has the purpose or effect of violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment; and

less favourable treatment related to sex or gender reassignment that occurs because of a rejection of, or submission to, sexual conduct.

The following are examples of harassment and bullying, but this list is by no means exhaustive:-

- **Unwanted Physical Conduct**

Unnecessary touching, patting or pinching or brushing against another employee's body or abusive behaviour.

- **Unwanted Verbal Conduct**

Such as unwelcome advances, persistent unfounded criticism, patronising titles or nicknames, propositions or remarks, innuendoes, lewd comments, jokes, banter, spreading malicious rumours or abusive language, which refers to a person's or a group's gender, colour, race, ethnic or national origins, age, disability or sexual preference, appearance etc. This includes repeated suggestions for unwanted social activities inside or outside the workplace, including mobile telephone calls.

- **Unwanted Non-Verbal Conduct**

Such as referring to an individual's characteristics or private life, making insulting, abusive or offensive gestures, leering, whistling, the display of photographic or suggestive literature, pictures or films/videos or inappropriate use of software, or network systems, including e-mail and the internet/intranet, or overbearing supervision or other misuse of power.

Bullying and harassment are similar behaviours, although harassment tends to be against individuals who are members of certain groups, some of whom are covered by discrimination legislation and the Council/School's Equality and Diversity Framework. Both bullying and harassment can occur where an employee abuses their position of power over another employee. This can undermine confidence and the effective working relationships of employees. Bullying/harassment may be direct or indirect, intentional or unintentional.

Third Party Harassment

This is where a third party subjects an employee, contractor or agency worker to unwanted conduct related to a protected characteristic. A third party may include a customer, supplier, vendor or visitor or any other individual engaged to conduct business with the Council.

Employees are encouraged to report any such incidents to their Line Manager/ Headteacher. Such circumstances may be anticipated during risk assessments and measures put in place to prevent or limit such harassment.

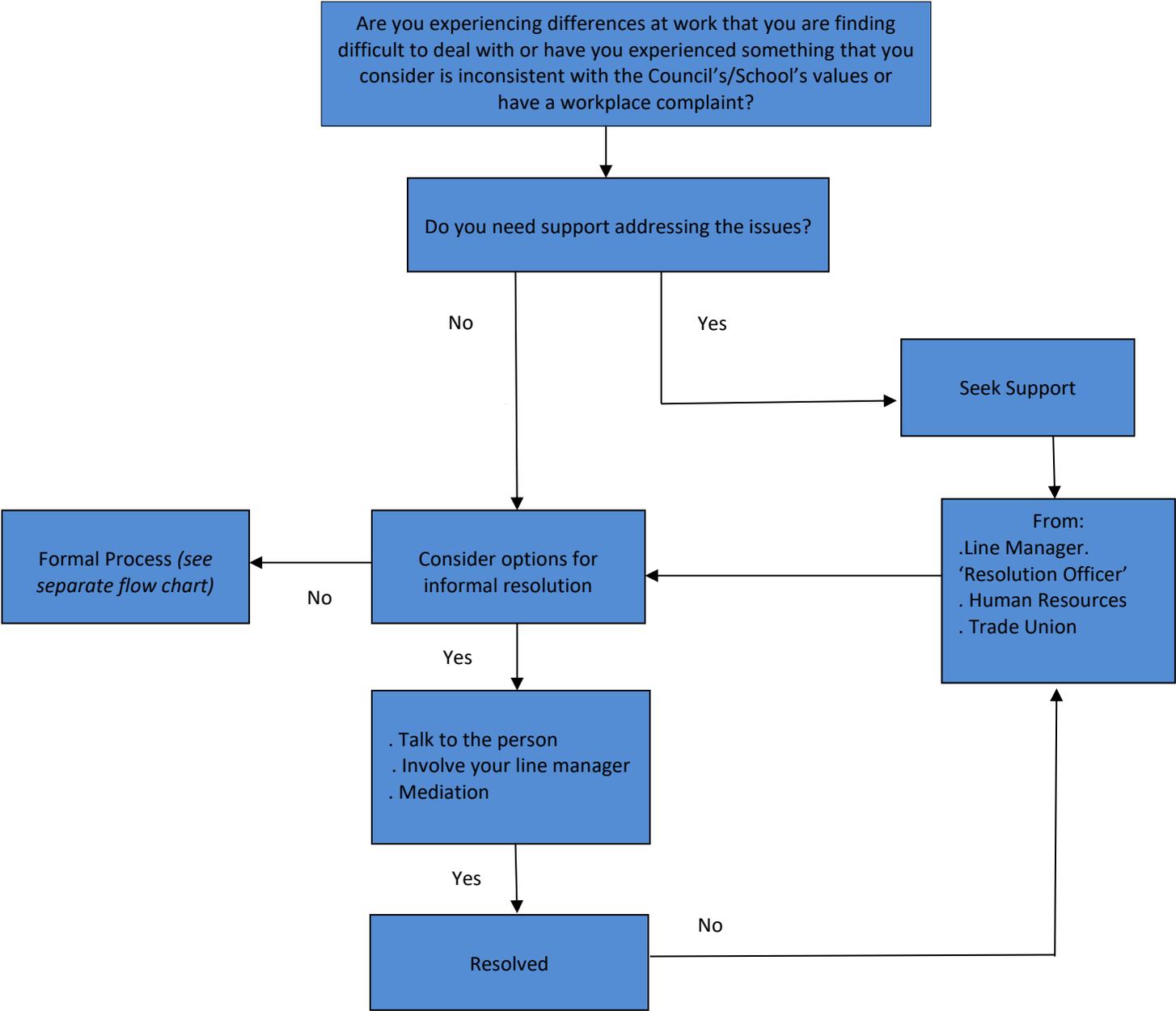
All staff are entitled to work in a safe and respectful environment and abuse or harassment from third parties will not be excused or tolerated. The Council will seek to enforce appropriate action against any third party instituting any abuse or harassment, including the potential withdrawal of services .

Victimisation

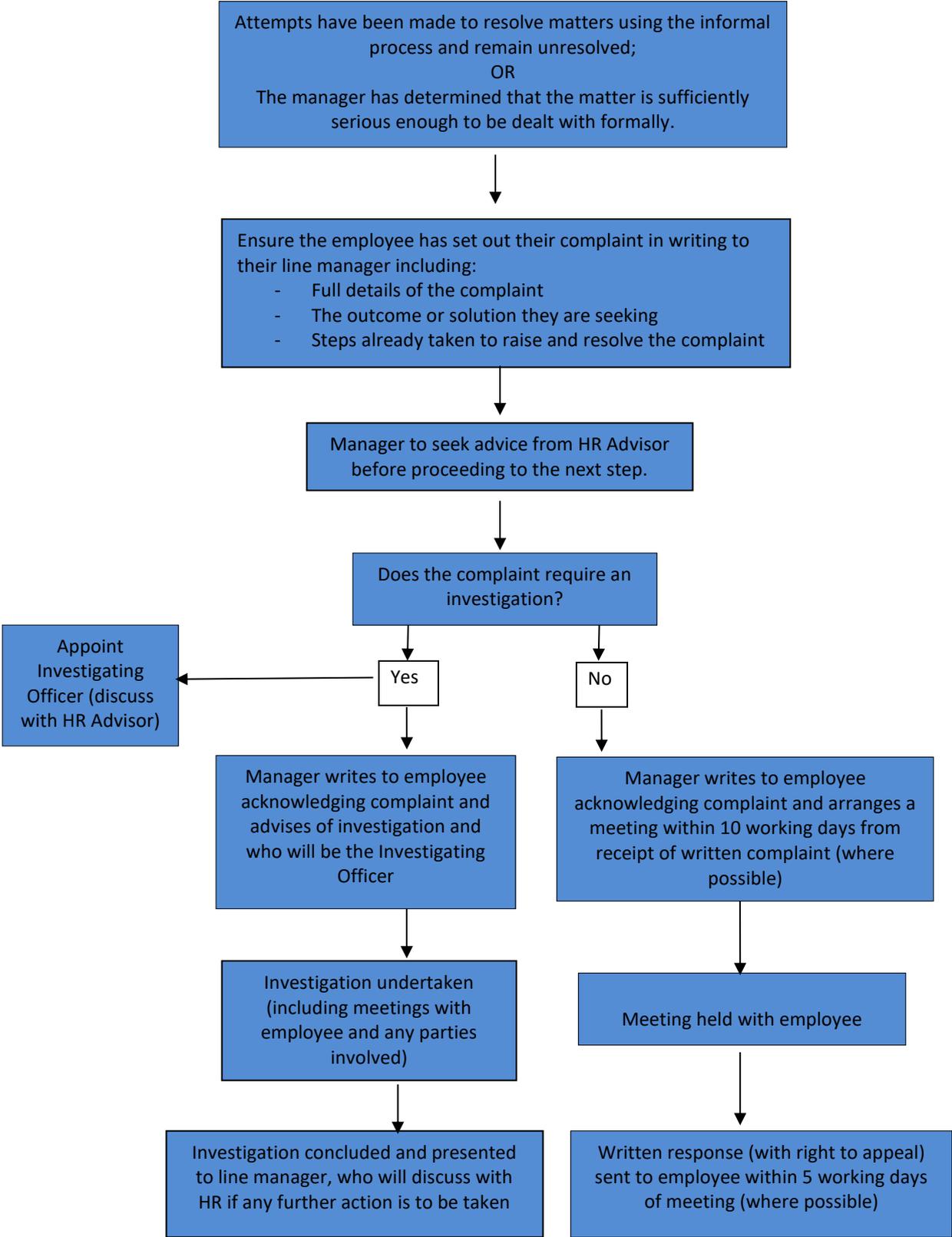
This is where a person is treated less favourably because they have made, supported or raised a complaint under the Equality Act; or because they are suspected of doing so. Victimisation is unacceptable behaviour and may be considered gross misconduct within the disciplinary procedure, which could result in the summary dismissal of the perpetrator.

Making a complaint that the employee knows to be untrue, or giving evidence that they know to be untrue, may lead to disciplinary action.

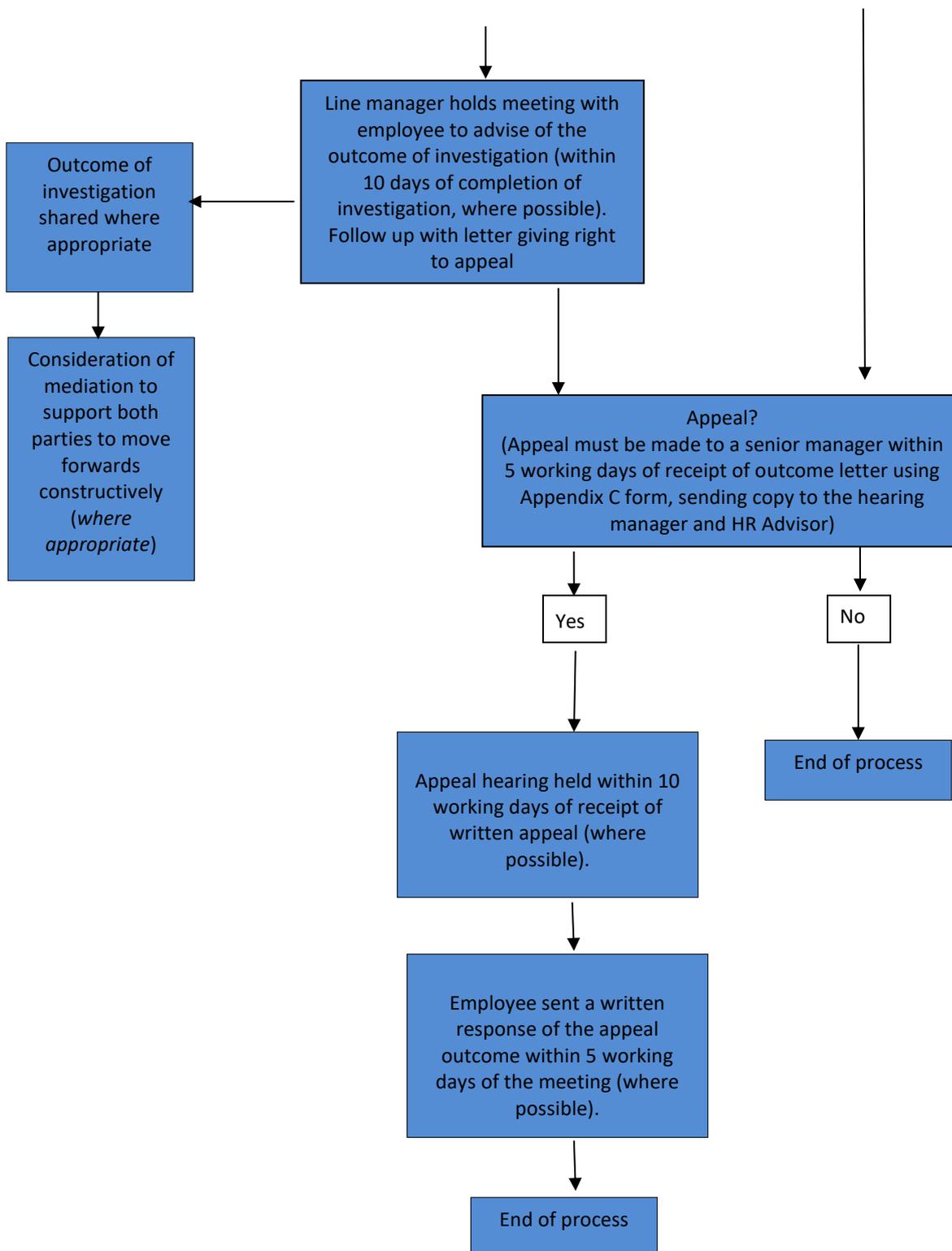
INFORMAL RESOLUTION PROCESS



FORMAL RESOLUTION PROCESS



FORMAL RESOLUTION PROCESS (continued)



APPEAL AGAINST FORMAL RESOLUTION MEETING OUTCOME

DATA PROTECTION FAIR PROCESSING NOTICE

All information supplied on this form may be held and used as follows:

The form is completed by the employee and sent to a Senior Manager, copying in the hearing manager, who will both retain a copy of the form until the appeal process has been exhausted. A copy of the form will also be shared with the relevant Human Resources Advisor to ensure the appeal process is correctly followed, and with members of the independent appeal panel (SMBC senior employees/school governors) as part of a confidential 'bundle' of evidence heard at an appeal meeting, or to an Employment Tribunal and legal representatives should a case progress that far. For further information about how we use your information please refer to the School's Data Protection Policy on the School's [Extranet](#) and Privacy Statement on www.solihull.gov.uk.

I wish to submit an appeal against the outcome of my formal resolution meeting.

PERSONAL DETAILS

Your Name:	
Your Job Title:	
Your Contact Telephone No.	
Union/Representative (if known)	
Name of Line Manager/ Headteacher/Chair taking decision	
Date of receipt of written decision	

GROUND OFS OF APPEAL. Please provide further detail for your grounds of appeal (continue on a separate sheet, if necessary).

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Your Signature:	
Print Name:	
Date:	

Please send this completed document to a senior manager/Chair of Governors and copy in the Manager/Headteacher who heard your complaint at the formal resolution meeting. You should also send a copy to the relevant HR Advisor who will arrange the appeal hearing. You will be advised shortly afterwards of the following arrangements. Please ensure you have supplied sufficient information to support your case.