POLICE AND CRIME COMMISSIONER FOR ESSEX

THE GRIEVANCE PROCEDURE

AND

GUIDANCE DOCUMENT

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1. INTRODUCTION

1.1 The Police and Crime Commissioner for Essex (PCC) Grievance Procedure has been prepared to recognise the PCC is a separate employer for employment and to incorporate the principles of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the Home Office ‘Fairness at Work’ Procedure, the Equalities Act 2010 and also to reflect organisational experience. The Procedure aims to assist more effective resolution of workplace issues and is for use by all PCC staff. It is intended to ensure all individuals the right to have grievances addressed fairly and effectively in an open and transparent manner. It is expected that all grievances will be resolved as quickly as possible.

This procedure has been analysed for equality, to understand the effect on protected groups\(^1\), and has been identified as having low potential for any adverse impact.

1.2 The office for the PCC is committed to being an organisation in which equality is a reality and every individual can expect to be treated fairly and with respect and dignity. No forms of harassment or bullying will be tolerated. Every member of staff will be accountable for their own actions and managers and supervisors will also be accountable for addressing problems raised within their areas of responsibility.

1.3 The Grievance Procedure is available to those who feel they have been subjected to unjustified treatment contrary to the Police and Crime Commissioner for Essex Equality Scheme. It is aimed at achieving resolution and remedy, it is not a disciplinary process and does not apportion blame or punishment. It will seek to achieve understanding

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\(^1\) The Equality Act 2010 protects people from discrimination on the grounds of ‘protected characteristics’. The relevant characteristics for services and public functions are Race, Disability, Gender Age, Sexual Orientation, Religion or Belief, Gender Reassignment and Pregnancy and Maternity
and a constructive approach to addressing any learning identified by all parties.

1.4 It must be acknowledged that it may not always be possible to resolve a grievance to an individual’s satisfaction, although their wishes should be taken into consideration as part of the decision making process. It is the manager’s responsibility to ensure a reasonable investigation is undertaken and to make an adjudication based on the balance of probabilities.

1.5 The Applicant (‘the Aggrieved’), as far as possible, should be able to bring some evidence to show why they feel that unjustified or unlawful discrimination or treatment has occurred. Complaints of sexual or racial harassment or other unwanted behaviour, victimisation or with respect to disability should be raised with Management, even if evidence cannot be provided; vexatious or malicious behaviour will result in disciplinary action.

1.6 What is a grievance?

The Grievance Procedure can apply in relation to any grievance about action by the organisation (employer) that could form the basis of an employment tribunal claim. It cannot be used for general matters of pay or grading although sex discrimination claims arising from ‘equal pay’ issues should be routed through this procedure. Claims may be made for direct gender pay discrimination even if there is no actual comparator. There are specific procedures for appeals against disciplinary or redundancy decisions. For advice on these contact should be made initially with the PCC’s HR Liaison Officer at Essex Police.

1.7 The Grievance Procedure is not a means to express disagreement with PCC policies or changes in policy – such concerns should initially be sent in writing to the Chief Executive or where appropriate routed through union representatives or the PCC’s HR liaison officer. Matters
relating to alleged discrimination or unfair application of policy (e.g. where an individual is treated less favourably than another) or non-compliance with policy may be raised through the grievance procedure. Likewise, issues relating to local management decisions may only be raised through the Grievance Procedure if an individual is treated less favourably than another as a result.

1.8 **Relationship to Employment Tribunal claims:**

It should be noted that allegations of unlawful discrimination on the grounds of sex, race, marital status, gender reassignment, disability, religion or belief, sexual orientation or pregnancy/maternity may be heard before an employment tribunal. Using the Grievance Procedure in any particular case will not prejudice the rights of any aggrieved person making a complaint to an Employment Tribunal. All parties should be aware of the need to register such complaints with the Tribunal within three months, less one day, of the date of the last act complained of. Other than in exceptional circumstances, staff wanting to make a claim to an Employment Tribunal on grounds of unlawful discrimination must first initially register their grievance, in writing, to their employer 28 days before they can lodge their claim to the ET office. When they do so the time limit for lodging their case will be extended by a further three months.

1.9 There is a statutory requirement for employers to deal with formal grievances in a reasonable and timely manner, using the process prescribed by the legislation (now incorporated into the PCC Procedure). If a case is subsequently accepted by the tribunal office, the employer's handling of the matter will be taken into account and could have bearing on the case outcomes and any costs awarded.

1.10 **Initial contact – other options:**

When an individual first approaches a supervisor or manager with an issue, there will usually be a number of options available to them, of
which treating the matter as a ‘grievance’ (formal or informal) may be just one. An individual should be free to approach any suitable person whom they feel may be capable of achieving an informal resolution prior to proceeding to the formal Fairness at Work Procedure. Not every issue will become a grievance and supervisors/managers should be able to work through a structured initial process that will support the member of staff and empower them to make the decisions about how to resolve the issues. This process is known as a ‘Helping Cycle’ and is the approach that any officer appointed to advise the aggrieved will also take, when making an initial contact with a member of staff. (See Appendix C).

1.11 Grievances where the applicant has left the organisation:

The individual should put their complaint in writing to the appropriate manager who should give a response in writing within 21 days. There is no statutory right of appeal.
2. GRIEVANCE PROCESS

THIS SECTION SHOULD BE READ IN CONJUNCTION WITH SECTIONS 3 AND/OR 4 AS APPLICABLE.

2.1. INITIAL STEPS

2.1.1 When a problem occurs, action should be taken to resolve it as soon as possible. If the aggrieved feels able, they should speak directly to the source of the complaint and attempt to resolve the matter.

2.1.2 If such attempts at negotiating a resolution are unsuccessful then the aggrieved should discuss the matter with any of the following:

- A Voluntary Grievance Adviser (VGA) from Essex Police – contact numbers can be found on the Essex Police Intranet via Homepage ‘Information’.
- A union representative
- A supervisor or manager
- The Equal Opportunities Adviser of Essex Police (EOA)

2.1.3 Any of these people listed above will help the applicant to clarify the facts and sort options for resolution (see Appendix C ‘Helping Cycle’). They can also accompany the individual to meetings as part of the resolution process.

2.1.4 Individuals wishing to invoke a grievance should at this point read section 2.2 and Appendix J.

2.1.5 If, at this point, the applicant decides they wish to pursue the matter further as either an informal or formal grievance they should seek a meeting with their supervisor (line manager). It would be helpful for them to compile a short account of the main issues, which will help the
supervisor or manager concerned to clarify the issues. (See Appendix B). The supervisor or manager should discuss the matter fully with the applicant and establish all the facts and their objectives for resolution. In most cases, it will be necessary to gather evidence or facts in order to conclude the matter, but this can often still be managed informally (see Appendices D, E and F).

2.1.6 Having considered all the alternative options for resolution, if the informal grievance procedure is selected, no records will be retained by management unless the matter involves allegations of potentially unlawful discrimination. If the other party refuses to participate in any stage, the complainant has the right to request that the procedure move immediately to the next stage. In such instances the relevant case papers should be forwarded immediately and directly to the stage manager handling the next stage.

2.1.7 If a resolution is achieved through informal process then the completed preliminary grievance form should be destroyed in the presence of the applicant, unless it concerns issues of discrimination in which case the form should be sent to the EOA of Essex Police for information and confidential retention.

2.2 How is the Formal Grievance Procedure invoked?

2.2.1 Where all efforts have failed to resolve a grievance informally the matter must be reported in writing, to their immediate supervisor. (This is necessary if the applicant may later wish to raise an employment tribunal claim). If the supervisor has already tried unsuccessfully to resolve the matter informally, the formal grievance should be taken to the Chief Executive (or his nominee who normally will be a member of the PCC’s Management Team).

2.2.2 Where the grievance concerns the person’s supervisor or manager, or where for any reason it is felt more appropriate to report it to another manager, this may be done (by initial reference to the Chief Executive).
If there is any doubt as to who is an appropriate manager then advice should be sought from the Equal Opportunities Adviser of Essex Police.

2.2.3 Where an individual has suffered harassment or has a complaint of a particularly sensitive nature, they may initiate the grievance procedure via a Grievance Adviser or union representative. It should be understood, however, that whilst the Grievance Adviser or representative can support and accompany an individual through the grievance process, it is not part of their role to resolve the issue. This is a management responsibility.

*WHERE ALLEGATIONS OF HARASSMENT OR BULLYING HAVE BEEN MADE, REFER NOW TO APPENDIX G AND H OF THIS MANUAL.*

2.3 Stage 1- Formal Procedure (Reporting the matter to the Chief Executive or his nominee)

A Grievance Registration Form (Appendices A & B) must be completed and submitted immediately to the Essex Police Equal Opportunities Adviser at HQ. (This allows the process to be monitored). The Chief Executive (or his nominee) who first receives the complaint must ensure an appropriate manager (the stage manager) is appointed to conduct an investigation and adjudicate a reasonable resolution on the balance of probabilities. The Chief Executive is also to appoint an independent monitor whom the Stage Manager is to immediately notify, to ensure that the procedure and the complaint made under it are fully monitored.

2.3.1 The Stage Manager must complete the grievance form as the matter develops, detailing facts, action taken and outcomes. Evidence/facts should be gathered, but sensitively, with due regard for confidentiality. (Refer to Appendix I). All relevant telephone conversations and
correspondence must be documented and retained with the form as a ‘file’.

2.3.2 The Stage Manager must ensure they have a full awareness of the seriousness and potential implications of any complaint at the earliest stage and should seek advice from the EOA, or the PCC’s HR Liaison Officer at Essex Police.

2.3.3 In all cases it will be necessary for the person handling the grievance to be clear of all the facts, in order for a fair resolution to be facilitated. However, it is important to recognise that the purpose of the Grievance Procedure is not to apportion blame or punishment. If an applicant’s objective for resolution expects such an outcome (e.g. they want a person sacked) then the applicant should be advised that the Grievance Procedure is not the appropriate vehicle for dealing with the matter and consideration should be given to initiating a discipline enquiry. The applicant should be encouraged to pursue realistic objectives.

2.3.4 The Stage Manager has a responsibility to ensure the issues are investigated and if at all possible, resolved within 7 days of receipt. It must be recognised, however, that this timescale is only an outline as there may be many justified reasons, e.g. holiday commitments of parties involved, why an investigation may be delayed, therefore flexibility should prevail. Delays should generally only occur with mutual consent and reasons must always be recorded on the grievance form. Sometimes it may be necessary to refer the matter to another manager to deal with, if, for example, the manager first receiving the grievance is unavoidably absent from the workplace due to annual leave or sickness.

2.3.5 On receiving a grievance, the Stage Manager should explain to the applicant that the facts will need to be gathered and that the purpose of collecting this information is to:
(i) assist the identification of objectives for resolution;
(ii) enable the seriousness and implications of the actions complained of to be objectively assessed (by the relevant stage manager) and;
(iii) assist management to make an informed decision on the balance of probabilities, regarding action to be taken.

It should also be explained that it will be necessary to speak to any other parties involved, which may include possible witnesses. It may be appropriate to convene a meeting of the parties concerned in an attempt to air the issues and find a resolution/or to research facts with other departments. All necessary research must be completed within this stage.

2.3.6 The following list gives a number of questions which should be considered when an issue is first raised either informally or formally:

(i) Is there any evidence or witnesses to substantiate the applicant’s claim? (Notes, marking guides, diary entries etc).
(ii) Do the allegations suggest contravention of either legislation, e.g. Disciplinary Procedure or PCC Policy? If so, how?
(iii) Is there a comparator cited? (A person who has been treated more favourably in the same circumstances?).
(iv) Has the treatment complained of happened to the individual before?
(v) How does the applicant think that it might be resolved?
(vi) What course of action does the applicant want to pursue?

If the complaint relates to conduct and there is an identified (alleged) perpetrator, that person should be spoken to as soon as possible. If the allegation is acknowledged, it will not usually be necessary to extend the research process unless the manager decides to refer to the discipline procedure.
2.3.8 Certain alleged acts of unlawful discrimination (e.g. some counts of sexual or racial harassment) may breach criminal as well as discrimination laws and also contravene the PCC’s disciplinary procedures. This fact must be pointed out to the applicant at the outset, to make them aware that it may be necessary to instigate a criminal or disciplinary investigation as a result of hearing the facts of their grievance. If a matter is referred to discipline or criminal process by the investigating officer, the matter will usually be withdrawn from the Grievance Procedure.

2.3.9 The onus is on the Chief Executive or his nominee receiving the grievance (or any investigator) to ensure all parties involved understand their right to representation and to keep all the parties informed of progress in the matter. The manager should also explain to the parties the need for confidentiality, i.e. that the matter should not be publicly discussed.

2.3.10 Arranging the meeting:

The Stage Manager should meet with the applicant, who has a right to be accompanied by a union representative or work colleague. The timing and location of the meeting must be reasonable. The applicant must take all reasonable steps to attend the meeting and to provide the details/ particulars necessary to enable a full and fair investigation. If the applicant fails to attend the meeting there is an obligation to rearrange the meeting once, but if the applicant fails to attend the rearranged meeting, the grievance will be considered to have been withdrawn.

The Stage Manager will consider all available information and on the balance of probabilities form a view as to whether or not the grievance is substantiated and give their proposed resolution in writing, (See Appendix B) based on their findings. Such judgements must be objective and based on the information available not on preconceptions. A decision will normally be given within 5 working
days. If this is not possible an explanation will be given together with an indication of when a response can be expected.

2.3.11 Where the proposed resolution is not acceptable to the Applicant they will have a right of appeal to a panel appointed by the Chief Executive.

2.3.12 Where the grievance is found to be substantiated and a resolution is agreed, management has an obligation to ensure that the agreement is followed through so that the applicant can see that their grievance has been dealt with properly. (There will also be an obligation on the applicant and any other party to co-operate according to the terms specified in the agreement).

2.3.13 On completion of stage 1, the Stage Manager should obtain written confirmation from the originator that he/she is either: satisfied that the problem has been resolved; not satisfied and wishes to proceed to the next stage; or not satisfied but wishes to withdraw the complaint (in this case the originator should be asked to record their reasons and afforded a period to fully consider their position and consult with relevant trade unions and staff associations).

2.4 Stage 2

2.4.1 This stage involves consideration of the case by the Chief Executive (the Stage 2 Manager) and a nominated Fairness at Work Co-ordinator. The object of the stage is to enable the originator to see the Chief Executive and to explore where appropriate the wider options for resolution. The Chief Executive should check with the originator that their feelings on the issue and the way forward are still the same and where appropriate, obtain information from third parties that may aid resolution of the situation. It may still be possible for the Chief Executive to facilitate mediation between the parties and the option of mediation by an independent person should also be considered where appropriate, subject to the agreement of the parties involved. Meetings
between the parties are not mandatory in this stage but should be considered where appropriate in achieving a resolution.

2.5 Appeal

2.5.1 All members of staff have a right of appeal to a Panel appointed by the PCC against the decision of the Chief Executive or his nominee at Formal Stage 2. Such appeals must be submitted to the PCC within 10 working days of receipt of the Stage 2 decision.

2.5.2 The main purpose of this stage is to examine whether the case was handled correctly and honesty within the framework of the procedure and to ensure that decisions have been made on an informed basis having due regard to all the relevant factors. Should any handling errors be discovered, the appeals manager should attempt to rectify them through all possible measures, including the instigation of disciplinary procedures in extremis. Meetings with the parties are not mandatory at this stage, but should be considered where appropriate in achieving a resolution.

2.5.3 The procedure for hearing an appeal is set out at Appendix B (ii).

2.5.4 On completion of the Appeal Stage the procedure is exhausted.

2.6 Request to re-open grievance cases, relevant matters:

2.6.1 Unless there are exceptional circumstances, applicants should normally present their grievance within three months of the event complained of occurring, or from the date they become aware of a certain action having happened. If an applicant wishes to revisit a case which has been closed, for example if new information becomes available, this must ordinarily be done within 21 days of the original closure. Applicants will not be able to draw on old information e.g. previous complaints unless it can be shown to be directly relevant to the case in progress, such as continuing harassment or discrimination.
2.7 SUMMARY OF GRIEVANCE PROCEDURE

**INFORMAL PROCESS**
COMPLAINT TO SUPERVISOR/LINE MANAGER
(SOME EXCEPTIONS APPLY).

**STAGE 1 (FORMAL)**
GATHER EVIDENCE, NEGOTIATE
COMPLAINT IN WRITING TO CHIEF EXECUTIVE.
MEETING WITH STAGE MANAGER. NOTIFY DECISION IN WRITING (7 DAYS TO INITIALLY RESPOND)
SHOULD BE COMPLETED WITHIN 14 DAYS

**STAGE 2 (FORMAL)**
- REVIEW
MEETING WITH CHIEF EXECUTIVE (STAGE 2 MANAGER)
INDEPENDENT MEDIATOR IF PARTIES AGREE
SHOULD BE COMPLETED WITHIN 14 DAYS

**STAGE 2 (APPEAL)**
APPEAL TO PANEL
(_NOTIFY DECISION IN WRITING WITHIN 5 WORKING DAYS OF HEARING )
3. UNDERSTANDING GRIEVANCES ISSUES

3.1 RESPONSIBILITIES AND LEGISLATION

3.1.1 Individuals are responsible for their own conduct and actions. They cannot ‘pass the buck’ to the organisation, but the organisation can also be liable for the actions of staff in some situations.

3.1.2 The onus is on supervisors and managers to challenge inappropriate conduct, behaviour and working practices of which they become aware.

3.1.3 All supervisors and managers should be aware that there are areas of legislation which could have particular bearings on grievance matters, including:

- Equality Act 2010
- Employment Rights Act 1996
- Management of Health & Safety at Work Regulations 1999 (re: risk assessments)
- Health and Safety at Work Act 1974
- Employment Relations Act 1999
- Part Time Workers Regulations 2000

3.1.4 Under current Health and Safety legislation, employers have a duty to their workers in respect of their safety and welfare at work. Safety representatives current powers under the Safety Representatives and Safety Committee Regulations 1977 (as amended 1992) give a more than sufficient base to investigate incidents involving bullying at work.
4. NOTES FOR GUIDANCE

4.1 CONFIDENTIALITY

4.1.1 All cases dealt with under the Grievance Procedure will be treated with the utmost discretion. However it may not always be possible to deal with a matter in total confidence. Examples of where supervisors or managers may need to disclose details on a need to know basis would be:

- Crime or serious discipline
- Health & Safety implications (Duty of Care)
- Advice needed
- Tribunal implications

4.1.2 Managers should ensure that all parties and any others interviewed as part of the process, are aware of the need to maintain discretion and professionalism.

4.1.3 Managers are reminded that potentially, an organisation can be ordered by an Employment Tribunal to disclose any documents, including ‘personal’ memos. Only medical records are exempt from disclosure without permission of the individual. Likewise, work related ‘confidential’ conversations between PCC members of staff might also be disclosable.

4.2 BURDEN OF PROOF

4.2.1 All parties should be reminded that the grievance procedure is aimed at achieving resolution rather than establishing guilt or blame. However, where decisions need to be made as part of the resolution process, these should be made on the balance of probabilities, based
on the information and facts available, not beyond all reasonable doubt. It will be necessary for managers to justify decisions as reasonable management action and show that the sort of investigation had been undertaken ‘that a reasonable employer would conduct’.

4.3 REPRESENTATION

4.3.1 The aggrieved person and any other party to a grievance will have the right to consult with and be accompanied by a Voluntary Grievance Adviser (VGA), a union representative, or a colleague employed by the PCC.

4.3.2 It should be understood that the role of any representative is to support, advise their ‘client’ where appropriate and take notes or speak on the ‘client’s’ behalf if necessary. Their participation in these matters should be constructive and not seen as threatening in anyway. If trade union representative wishes to advise their clients to disagree with the outcomes of any stage, they should ensure that the procedures outlined at paragraphs 2.3.9 or 4.1, as applicable, are followed. Meetings with parties to a grievance should be arranged to allow the attendance of such representatives.

4.3.3 All parties involved in a grievance should have access to an individual of the same gender if desired and within Essex Police there is a network of staff called Grievance Advisers, (see paragraph 4.4) who can provide guidance and support to staff in grievance matters, especially where an individual has suffered harassment or has a complaint of a particularly sensitive nature.

4.3.4 In addition, the aggrieved person or other parties may wish to take advice from the Equal Opportunities Adviser on any matter relating to the grievance, or the operation of these procedures.

4.4 VOLUNTEER GRIEVANCE ADVISERS
4.4.1 As harassment and in particular sexual harassment, may often result in individual difficulties for the victim, those suffering harassment may wish to seek advice about options or speak to someone other than management prior to raising their complaint. Essex Police Grievance Advisers’ Network is available to any member of PCC staff and exists in addition to union representatives, to support individuals enduring workplace problems.

4.4.2 The purpose of this network is to explore problems, clarify issues and consider what options may be available, also to provide support to the individual during the resolution process. Contact is discreet and the practice is in line with the European Commission’s Code of Practice (Protecting the Dignity of Women and Men at Work), which recommends that organisations designate individuals to provide advice and assistance to staff subjected to sexual harassment where possible, with responsibilities to assist in the conciliation of any problems, whether through informal or formal means.

4.4.3 As part of the network, the core functions of an Essex Police Grievance Adviser can be described as being:-

- to listen to what has happened
- to deal with the emotions arising as a result
- to help the aggrieved prepare a summary of facts
- to draw the aggrieved’s attention to whatever further formal or informal course of action is open to them
- if the aggrieved wishes to complain formally, to assist her/him in filing a grievance
- if the aggrieved wishes, to draw the problem to the attention of an appropriate manager

4.4.4 Union representatives may also undertake a similar role for their members. Such members may, however, alternatively contact a Voluntary Grievance Adviser if they so wish.
4.5 VICTIMISATION

4.5.1 Victimisation of a person who has raised a complaint or invoked, or intends to invoke, the grievance procedure, or is taking legal action, or who helps another such person will amount to a breach of discipline. In discrimination or harassment cases, it may also constitute unlawful conduct under legislation. However, the victimisation provisions do not apply if the allegation of discrimination is false or is not made in good faith.

4.5.2 The unjustified transfer of an aggrieved member of staff could be regarded as an act of victimisation. This course of action should never be used simply to resolve a grievance. There may be operational reasons which justify a move, or a move may be requested. In these instances, the reasons must be fully recorded. The Equal Opportunities Adviser of Essex Police should be consulted before the transfer of anyone involved in a grievance.

4.5.3 If a person feels that they or anyone else is being victimised, they should contact without delay, their manager, the Equal Opportunities Adviser, Professional Standards, a Federation or union representative, or a Grievance Adviser for guidance.

4.5.4 Where a line manager/supervisor becomes aware of any form of victimisation – in circumstances where a complainant, the subject of a complaint, or anyone who has assisted them has suffered less favourable treatment from their involvement in the complaint – it should be acted upon immediately and referred for disciplinary action where appropriate. It may be necessary to consider separating the complainant from the person who is subject of the complaint so that they no longer work together. It may be possible to arrange a temporary transfer, or a period of leave for either party. The
compulsory transfer of any of the parties involved could be an act of unlawful victimisation under the discrimination legislation. Such action should only be considered where it is requested, with care taken to ensure the move is what the individual wants.

4.6 TIME LIMITS

4.6.1 The timescales referred to in the Grievance Procedure, are advisory, but all grievances should be investigated as soon as is reasonably practicable. Stage 1 should be completed within 14 days of receipt of a formal written complaint. If the procedure advances to stage 2 this should also be completed within an additional 14 days. Managers will be expected to explain any delays. Where extensions to these periods are mutually agreed, such agreements should be documented. Failure by a stage manager to complete it within the prescribed number of days, without an agreed extension or other reasonable grounds, could needlessly encourage the originator to progress the case to an employment tribunal and may give stronger grounds for a claim. There are time limits for the lodging of cases with Employment Tribunals which must be explained to all parties at each stage of the procedure, i.e. individuals must register discrimination claims with the tribunal office within three months less one day of the date of the last act complained of. As of 1st October 2004, applicants must initially register their grievance in writing to their employer 28 days before they can register an ET claim. If the applicant indicates they may be considering an ET claim, they should be made aware of the timescale at the outset of the grievance by the supervisor or manager responsible for dealing with it.

4.6.2 Where it becomes obvious that a time limit cannot be achieved, all parties should be advised at the earliest opportunity by the stage manager. Consultation should take place on revised timescales and all parties should be advised of any change to the target date. Due regard should be given to the time limit for lodging a case at an employment tribunal. The final decision to extend should lie with the stage manager at each
stage. To ensure such decisions are taken in the best interests of resolving the case, the reason and any objections by any party to the extension, must be recorded.

4.7 RELATIONSHIP BETWEEN GRIEVANCE PROCEDURE AND DISCIPLINE OR CRIMINAL INVESTIGATION

4.7.1 Procedures for dealing with alleged criminal or disciplinary offences reported by staff are well established. These procedures are entirely separate from the grievance process. Occasionally, however, a grievance will involve allegations of criminal or serious disciplinary offences. The following paragraphs provide guidance on the handling of such cases.

4.7.2 It is important to note the different standards of proof between criminal investigations where the case must be proved ‘beyond all reasonable doubt’ and Employment Tribunals and discipline procedures where the decision will be based on the ‘balance of probabilities’. Therefore, a complaint, for example, of sexual harassment might result in a criminal investigation of assault being unproven, but the applicant could still have a tribunal find in their favour.

4.7.3 On receiving a grievance, the supervisor or manager concerned must consider the following:-

- Is there a criminal allegation?
- Is there an allegation of a breach of discipline?
- Whether there are known previous allegations against the same individual(s).
- Whether the applicant would be willing to co-operate with a disciplinary inquiry if such were instigated.

4.7.4 Where the allegations suggest criminal conduct or more serious breaches of discipline might have occurred (e.g. dishonesty, physical assault, sexual or racial harassment), the matter MUST be discussed initially with the Chief Executive or the Employee Relations Manager of
Essex Police in relation to PCC staff discipline issues. It must be explained to the applicant that the nature of the allegation makes this necessary and that certain information will need to be shared in that discussion but in most cases the applicant's identity can at that stage remain anonymous. The manager should also consider whether or not the allegation should be recorded in accordance with Schedule 3 paragraph 11 of the Police Reform Act 2002.

4.7.5 Where it is suggested that less serious disciplinary offences have been committed, the supervisor or manager should carefully consider the available evidence and consider the implications of initiating or not initiating a disciplinary enquiry, in accordance with disciplinary procedures. It might be helpful to seek advice from the Chief Executive or the Employee Relations Manager or the Equal Opportunities Adviser of Essex Police. Obviously, if the applicant is reluctant to co-operate with disciplinary action then it is unlikely such a route would be successful, i.e. if evidence cannot be provided and indeed it could be more distressing for them. However, it must be remembered that the ultimate decision to initiate a disciplinary enquiry lies with management, not the applicant.

4.7.6 If there are no separate issues this should not automatically defer resolution under the Fairness at Work procedure. The complainant’s views should be sought on how the matter should be resolved to their satisfaction. It may be useful to request a ‘victims personal statement’ describing the way in which they have been affected and the way they would wish their issue to be resolved, although this would not be the determining factor in the way the matter is resolved.

4.7.7 In some circumstances, a stage manager may consider that the issue is so serious that it must be considered under the Police Reform Act 2002 (Schedule 3 paragraph 11) or under Police Staff Discipline or Police Misconduct Procedures. The complainant must be made aware of any decision to instigate a formal investigation. The complainant will not be forced to give evidence against his/her will and should not be
subjected to any action if they refuse to do so, but it must be recognised and the complainant made aware that a refusal to give evidence at a hearing may have an impact on the final outcome.

4.7.8 If the Fairness at Work issue is converted to a Police Staff Disciplinary or Police Misconduct Investigation, the status of the Fairness at Work issue should be reviewed and not left in abeyance. In some circumstances it may still be possible to resolve the Fairness at Work issue independently of the investigation or Employment Tribunal hearing. The complainant must be informed of the options available to them and the necessary time limits for action. Any decisions or actions under the Fairness at Work procedure must be recorded.

4.7.9 It is acknowledged that where minor but, nonetheless, unwarranted offences are concerned, discretion should prevail in favour of reaching a solution which stops the particular actions happening and hence resolves the grievance. Clearly there must then be an onus on management to monitor the situation from that point and any recurrence of the trouble would then trigger disciplinary action. Where it is decided to deal with a matter informally, the Equal Opportunities Adviser (EOA) of Essex Police must be notified if the complaint relates to discrimination on grounds of sex (including marital status and gender reassignment), race, disability, sexual orientation, religion or belief, age or trade union membership. Such information will be held in confidence by the EOA but will be monitored to ensure inappropriate behaviour is being tackled. No references should be placed on personal files.

4.7.10 Where it is decided to initiate a criminal or disciplinary investigation, such action will usually render the closure of the matter as a grievance, unless there are associated issues which will not be dealt with under the discipline investigation. The Equal Opportunities Adviser of Essex Police should be consulted in such situations.
4.7.11 Grievance documents may be presented as evidence in disciplinary matters, criminal investigations and Employment Tribunals.

4.8 ROLE OF THE EQUAL OPPORTUNITIES ADVISER

4.8.1 The Equal Opportunities Adviser is responsible for monitoring all formal grievances and assessment of appeals, but otherwise performs a non-executive role in relation to the Grievance Procedure. However, the Equal Opportunities Adviser is available to discuss options and provide information about the procedure to any party involved in a grievance matter, or anyone who is considering making use of the Grievance Procedure, unless such action by the Equal Opportunities Adviser would compromise him or herself or the integrity of the Grievance Procedure itself. He/she is not responsible for the resolution of grievances, which is a line management function.

4.9 RECORDING AND MONITORING OF GRIEVANCES

4.9.1 The Equal Opportunities Adviser is responsible for monitoring the use made of the Grievance Procedure and its effectiveness and for reporting on these to senior management. (All reported information will be anonymous).

4.9.2 It is essential that a Grievance Registration Form is completed every time the formal procedure is invoked and forwarded immediately to the Equal Opportunities Adviser at Police HQ so that he/she can monitor the progress of each case.

4.9.3 Managers should also consider whether an allegation meets the criteria of the Police Reform Act 2002, to be recorded as a Recordable Conduct Matter (Schedule 3 paragraph 11) and whether or not it should be referred to the Independent Police Complaints Commission (Schedule 3 paragraph 13). Consideration might also be given to whether any guidance from the IPCC on dealing with such matters is usefully applicable to the matters covered in these procedures.
4.9.4 A grievance form must also be completed as a record of all formal grievances. (See paragraph 2.3.1).

4.9.5 When a grievance is resolved all documentation and correspondence must be sent to the Equal Opportunities Adviser for confidential retention. Under no circumstances should any forms or copies be placed on an individual's personal file.

4.9.6 From time to time 'quality' questionnaires will be sent to individuals who have invoked the grievance procedure, inviting them to report their comments and criticisms of how their issue was dealt with, to the Equal Opportunities Adviser. Response is voluntary and information will be treated in the strictest confidence.

4.9.7 In keeping with good practice guidance individuals invoking the Grievance Procedure will be invited to record their ethnicity and other details on the Grievance Registration Form, for the purpose of workforce monitoring. Any resulting statistical information will not identify individuals and will be processed in accordance with the Data Protection Act.

4.10 GRIEVANCE RESOLVED OR NOT PURSUED

4.10.1 When a resolution is achieved or the complainant decides to withdraw the matter or not proceed further with it, the person handling the grievance at that stage must ensure that the individual concerned confirms this in writing on the grievance form. The complainant should be advised that before doing so, however, he/she may want to discuss his/her decision with a Grievance Adviser, a colleague or friend or a representative of the staff association or recognised trade union. At least three days should be allowed to elapse to enable the person to do so.
4.11 ACCESS TO, AND RETENTION OF, GRIEVANCE DOCUMENTS AND RECORDS

4.11.1 Where allegations have been made against a specific individual, that person will be informed of the matter and given the right to reply. Where an individual is cited in particular documents, it may not be appropriate to provide copies to them if the document contains references to other parties, unless the permission of those parties is first obtained. Refer to the EOA for advice if necessary.

4.11.2 The applicant should be fully aware of what is recorded on the grievance form and should have sight of it at every stage as they are required to sign it at every stage.

4.11.3 At the conclusion of the Grievance Procedure all records and relevant papers should be forwarded under confidential cover, without delay, to the Equal Opportunities Adviser for retention. These papers should be retained separately from all other personnel papers or personnel files. Access to the information should only be obtained through a request under the Data Protection Act. These records will be retained for a period of six years. Under no circumstances should any documentation relating to a grievance be placed on an individual’s personal file or retained locally. They are not to be referenced as part of any member of staff’s misconduct, promotion selection or grading procedures.
5. USEFUL CONTACT NUMBERS

5.1 Local Contact Numbers

Equal Opportunities Adviser 151056
Occupational Health 130135
Welfare Officers 130141
UNISON Office 130059
24 hour Integrity Line 01245 452106
Disability and Diversity Advisor 166266
HR Administrator or EOA 151056
Employee Relations Officer 166227
Worklife Balance Network 15104

NEXUS (Lesbian, Gay, Bisexual & Transgendered staff) 07669 162487
6. FORMS

6.1 There are two forms to be completed when a formal grievance is raised - the Registration Form and the Grievance Form itself. Where a matter is resolved informally they do not need to be completed.

Both forms can be downloaded from the Intranet Electronic Forms menu

6.2 The Registration Form

This form is shown at Appendix 'A'. It must be completed every time a formal grievance is raised and sent under confidential cover to the Equal Opportunities Adviser at Headquarters.

6.3 The Grievance Form

There is now only one Form which incorporates the two stages of the formal grievance procedure. The form is reproduced at Appendix B(i).

6.4 Appeal Procedure

The procedure to be followed for consideration by the PCC Panel at an Appeal is set out at Appendix B(ii).
PCC for Essex Grievance Procedure - Registration Form

To be completed immediately a FORMAL grievance is invoked

1. Applicant details
Name ........................................................................................................ Date .................
Post/Title/Rank .......................................................................................... PIN .................
Div/Dept ......................................................................................................

For the purpose of Equal Opportunities Monitoring, please tick appropriate boxes:

I am  Female  Male

What is your ethnic group?

[Choose one section from (a) to (e) then tick the appropriate box to indicate your background]:

W  a) White
W1  British
   English
   Scottish
   Welsh
W2  Irish
W9  Any other white background, please state

M  b) Mixed
M1  White & Black Caribbean
M2  White & Black African
M3  White & Asian
M9  Any other mixed background, please state

A  c) Asian, Asian
   British Asian
   English, Asian
   Scottish or Asian
   Welsh
A1  Indian
A2  Pakistani
A3  Bangladeshi
A9  Any other Asian background, please state

B  d) Black, Black
   British Black
   English, Black
   Scottish or Black
   Welsh
B1  Caribbean
B2  African
B9  Any other black background, please state

O  e) Chinese, Chinese
   British, Chinese
   English,
   Chinese Scottish,
   Chinese Welsh or other ethnic group
O1  Chinese
O9  Any other background, please state

I would describe myself as having a disability

Yes  No

Appendix A  
Logo PCC  
Staff in Confidence
2. **What is the grievance about?**

<table>
<thead>
<tr>
<th>Option</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alleged non-compliance with Promotion Procedures</td>
<td></td>
</tr>
<tr>
<td>Alleged non-compliance with Specialist Post or other selection procedure</td>
<td></td>
</tr>
<tr>
<td>Other unfair treatment in relation to selection</td>
<td></td>
</tr>
<tr>
<td>Inappropriate behaviour</td>
<td></td>
</tr>
<tr>
<td>Biased/Subjective/Un-evidenced Appraisal or Assessment</td>
<td></td>
</tr>
<tr>
<td>Alleged discrimination on grounds of sex</td>
<td></td>
</tr>
<tr>
<td>Alleged discrimination on grounds of marital status</td>
<td></td>
</tr>
<tr>
<td>Alleged discrimination on grounds of race</td>
<td></td>
</tr>
<tr>
<td>Alleged discrimination on grounds of disability</td>
<td></td>
</tr>
<tr>
<td>Alleged discrimination on other grounds</td>
<td></td>
</tr>
<tr>
<td>Inconsistent application of a specific Policy (please state which policy):</td>
<td></td>
</tr>
<tr>
<td>Other (please specify):</td>
<td></td>
</tr>
</tbody>
</table>

3. **Have you completed a Preliminary (Summary of Facts) Grievance Form?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If NO you should do so as this will help you to set out the facts of your grievance. Forms can be obtained from:

- Operating Manager – PCC for Essex.
- Supervisor/Manager to whom you have reported this matter.

IF YES the Preliminary form should be given to the person to whom you have reported this grievance.

4. **Have you contacted a:**

<table>
<thead>
<tr>
<th>Role</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Grievance Adviser?</td>
<td>Yes</td>
</tr>
<tr>
<td>Union Representative?</td>
<td>No</td>
</tr>
</tbody>
</table>
5. Details of person to whom your formal grievance has been reported (stage one):

Name .................................................................................................................
Post/Title/Rank ....................................................................................................
Location ...............................................................................................................  
Date Reported ........../........./........

Who has submitted this Registration Form?

☐ Applicant
☐ Grievance Adviser
☐ Supervisor/Manager to whom the grievance was reported at stage one.
☐ Other (please specify) .........................................................................................

Forward this form immediately under ‘Confidential’ cover to:

Equal Opportunities Adviser, Headquarters
### PCC for Essex Grievance Procedure

#### Preliminary Details (Summary of Facts)

To be completed by or on behalf of the Applicant

---

1. **Applicant details**

<table>
<thead>
<tr>
<th>Name</th>
<th>PIN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Post/Title/Rank</th>
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<tbody>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Div/Dept</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

---

2. **What is the grievance about?**

- [ ] Alleged non-compliance with Promotion Procedures.
- [ ] Alleged non-compliance with Specialist Post or other selection procedure.
- [ ] Other unfair treatment in relation to selection.
- [ ] Inappropriate behaviour.
- [ ] Biased/Subjective/Un-evidenced Appraisal or Assessment.
- [ ] Alleged discrimination on grounds of sex.
- [ ] Alleged discrimination on grounds of marital status.
- [ ] Alleged discrimination on grounds of race.
- [ ] Alleged discrimination on grounds of disability.
- [ ] Alleged discrimination on other grounds.
- [ ] Inconsistent application of a specific Policy (please state which policy):
  - ...
  - ...
  - ...
- [ ] Other (please specify):
  - ...
  - ...
  - ...
3. The Person(s) I am complaining about are:

........................................................................................................................................
........................................................................................................................................

4. I have evidence / witnesses to the act(s) complained of

Yes [ ] No [ ]

The act(s) complained of occurred on or around the following date(s):

........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

5. I consider that the treatment I am complaining about was unfair / unlawful / inappropriate because:

........................................................................................................................................
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6. I have taken the following action to try to resolve this problem:

........................................................................................................................................
7. IMPORTANT  What objectives do you want to achieve by raising this grievance?
  i.e., “My grievance would be resolved if: (e.g., the bullying was stopped)”

8. I have contacted a:  Grievance Adviser? [ ]  Tick if YES
                        Union Representative? [ ]

Signed  .................................................................  Date  .............
NOTE: If the grievance is solved INFORMALLY this form should be destroyed by the Applicant UNLESS it concerns matters of potentially unlawful discrimination in which case it should be sent to the EOA.

If a FORMAL grievance is instigated, the nominated Manager (Stage Manager) should complete the next part of this form (Stage 1)

PCC for Essex Grievance Procedure

1. All cases dealt with under the Grievance Procedure will be treated confidentially.

2. The Stage Manager must inform the aggrieved of their right at any stage to consult with and be accompanied by a representative of a trade union recognised by the PCC or another member of staff of the PCC or a voluntary grievance advisor of Essex Police.

3. On completion of the procedure all paperwork must be forwarded to the Equal Opportunities Adviser for retention. On no account will any documents associated with the grievance be placed on the personal or divisional files of the aggrieved or any other party involved. To do so is a breach of PCC policy and this procedure itself.
FORMAL STAGE 1

To be completed by the Stage Manager.

Name of person ............................................................... PIN ....................... recording

Post/Title/Rank ............................................................... Date ....................... 

Points I need to research:

1. .................................................................................................
.................................................................................................

2. .................................................................................................
.................................................................................................

3. .................................................................................................
.................................................................................................

4. .................................................................................................
.................................................................................................

5. .................................................................................................
.................................................................................................

6. .................................................................................................
.................................................................................................

Persons I need to discuss these matters with:

1. .................................................................................................
.................................................................................................

2. .................................................................................................
.................................................................................................
3. ……………………………………………………………………………………………………………………………
   ……………………………………………………………………………………………………………………………
4. ……………………………………………………………………………………………………………………………
   ……………………………………………………………………………………………………………………………
5. ……………………………………………………………………………………………………………………………
   ……………………………………………………………………………………………………………………………
6. ……………………………………………………………………………………………………………………………
   ……………………………………………………………………………………………………………………………

“Has a Grievance Registration Form been completed?”

Summary of findings:
(attach a supplementary report if necessary)

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…………………………………………………………………………………………………………………………
I have considered all the facts and **on the balance of probabilities** I conclude that:

*(attach a supplementary report if necessary)*

- The matter has been resolved by way of the following: *(specify below)*
- I cannot resolve this matter to the Applicant’s satisfaction because: *(specify below)*
- I proposed the following resolution which is unacceptable because: *(specify below)*

---

**Recommended Action**

- No Further Action: *(state why)*
- Withdraw from Grievance Procedure: *(state why)*

---

**Progress to Stage 2: (state why)**

---

Signed ………………………………………………………………………

(Person responsible for this Stage)
Applicant’s Response (Applicant to tick as appropriate)

☐ I am satisfied that my grievance has been resolved.

☐ I have discussed my grievance but do not wish to pursue it.

☐ My grievance has not been resolved and I wish the matter to pass to Stage 2 because:

 Allow Applicant 3 days to consider his/her decision before signing below

Signed ................................................................. Date ..............

(Person responsible for this Stage)
### STAGE 2 (REVIEW)

Where a matter has not been resolved by the first Stage Manager investigating the case, this stage will provide for a further evaluation of the facts by the Chief Executive.

**All necessary research must be completed by the Stage 1 Supervisor/Manager before the matter is accepted at Stage 2.**

<table>
<thead>
<tr>
<th>Name of Manager recording</th>
<th>PIN</th>
<th>Post/Title/Rank</th>
<th>Date</th>
</tr>
</thead>
</table>

**Persons I need to discuss this matter with:**

1. .................................................................................................................................
2. .................................................................................................................................
3. .................................................................................................................................
4. .................................................................................................................................
5. .................................................................................................................................
6. .................................................................................................................................

**Outcomes of Action:**

*(attach a supplementary report if necessary)*

.................................................................................................................................
.................................................................................................................................
.................................................................................................................................
.................................................................................................................................
.................................................................................................................................
.................................................................................................................................
.................................................................................................................................
I have considered all the facts and **on the balance of probabilities** I conclude that:

*(attach a supplementary report if necessary)*

- The matter has been resolved by way of the following: *(specify below)*
- I cannot resolve this matter to the Applicant’s satisfaction because: *(specify below)*
- I proposed the following resolution which is unacceptable because: *(specify below)*

---

**Recommended Action**

- No Further Action: *(state why)*
- Withdraw from Grievance Procedure: *(state why)*
Papers to EOA for advice: (state why)

Signed ................................................................. Date .................
(Person responsible for this Stage)

Applicant’s Response (Applicant to tick as appropriate)

- I am satisfied that my grievance has been resolved.
- I have discussed my grievance but do not wish to pursue it.
- My grievance has not been resolved and I wish the matter to pass to the Appeal stage (Please state why you wish to appeal.)

Allow Applicant 3 days to consider his/her decision before signing below

Signed ................................................................. Date .................
(Person responsible for this Stage)
PANEL MEETING PROCEDURE

1. The Chair of the Panel will introduce the members of the Panel and explain the purpose of the meeting.

2. After dealing with any preliminary issues raised, the Chair will invite the Appellant or their representative to make their submissions supporting it, where appropriate with relevant documentation.

3. The members may ask the Appellant or their representative any questions.

4. The Chair will invite the Chief Executive of the PCC for Essex or his nominee who considered the grievance at Stage 2 to make their submission, supporting it, where appropriate, with relevant documentation.

5. Members of the panel may ask the Chief Executive or his nominee any questions.

6. The parties will be invited by the Chair of the Panel to make any concluding remarks.

7. The Panel will retire to consider its decision and if unable to give it on the same day will provide it together with reasons in not more than 5 working days by completion of the appropriate part of Form B(i).
(C) ‘The Helping Cycle’ – First contact with a complainant

(i) Contracting:

Set out any parameters re meeting – timescales, confidentiality, seek agreement to take notes.

(ii) Fact Finding:

Ask the individual to outline the situation that concerns them. Subsequently seek a more in-depth version. Be sure to indicate your empathy as this progresses (nods, ‘I See’ etc) but do not offer views / opinions.

(iii) Clarification:

You should now seek to clarify your understanding of the incident(s). You need to know as much detail as possible including how the individual felt, the effect that the situation had on them and whether they have taken any action so far themselves, so that you can consider all possible options. Be careful not to infer or suggest you doubt the word of the individual or challenging what they have said. Again, do not offer views, opinions, advice.

(iv) Option Giving:

Consider what options are open to the individual, including ‘do nothing’. You may want to take a few minutes to think about this. Outline the options to the individual, making sure they hear them all. Ask if they have any further options to suggest.

(v) Option Sorting:

It is important that the individual is made aware of the pros and cons of each option in order to make an informed decision. You should therefore explore the potential consequences with them, but be careful not to state or imply any preferred option. Give relevant information but not judgement about potential outcomes of any option i.e. it would be appropriate to explain that if formal discipline were an appropriate way forward, the perpetrator may have to
appear before a tribunal or discipline board, but it would NOT be appropriate to suggest that they may lose their job as a result.

Even if the individual asks directly (‘what would you do?’), DO NOT offer preferences, unless the matter appears so serious you have no choice but to say the matter will be dealt with via a discipline investigation. (Even then consider carefully the likely success if the individual might be reluctant to co-operate with such an enquiry).

(vi) **Decision making:**

The individual must decide for themselves – *do not give advice!* Help them make an informed decision but no more. Remember options can be tried and others revisited if the first approach does not resolve the issue.

(vii) **Action Planning**

As their line manager, agree the course of action. Your role is to assist the individual as well as you can. Arrange to meet again with them to check progress and their welfare. If their decision was to raise an informal or formal grievance, you will now be responsible for investigating and dealing with that matter.

(viii) **Conduits for further assistance:**

Don’t forget our support resources – VGAs, Unison, etc. They can all offer specific support to the individual whilst you are helping them resolve their problem. Make it clear you are not ‘passing the buck’ to these other people – they can help in addition to your role. Don’t forget *you* can get advice from your HR Liaison Officer or the Equal Opportunities Adviser at Essex Police.
CHECKLIST FOR EFFECTIVE GRIEVANCE HANDLING:
RESPONDING TO THE APPLICANT

- Listen to what is being said. Express no opinion. Do not be judgemental.
- Show empathy and support. Do not reject. Recognise, acknowledge and understand their emotions at this time.
- Consider impact of the matter on the complainant and the coping strategies they might have employed.
- Explain - confidentiality; representation; informal/formal approach; victimisation; Grievance Advisers.
- Clarify points and elicit the full facts – what was said, done or perceived to have happened? Remember the burden of proof is on the balance of probabilities, but are there any records of events or witnesses?
- Complete the ‘Summary of Facts’ part of the grievance form to clarify the problem and how the aggrieved thinks it might be resolved.
- Could the grievance become an Employment Tribunal matter?
- Agree a timescale for action/next meeting. Agree any action and make sure it happens. If the applicant fails to provide particulars or otherwise co-operate the grievance will be considered to have been withdrawn.
- Meet with other parties as soon as possible
- Give all parties a copy of Grievance Procedure Manual (this booklet).
- Keep all parties aware of progress and remember grievances should not be discussed publicly - only with any appropriate parties.
- Complete all related paperwork if a formal grievance is invoked.
- At the end of a ‘Stage’ allow up to 3 days for the aggrieved to consult and consider the outcomes/further action.
- Aim to resolve within the suggested timescales as far as is practically possible. Forward paperwork as appropriate immediately the aggrieved has signed at the end of a Stage.
Ensure no victimisation occurs. (see 4.5)

All paperwork to be passed to the Equal Opportunities Adviser under confidential cover, when grievance is complete. Under no circumstances should copies of the paperwork be kept or placed on personal/divisional files.
CHECKLIST FOR EFFECTIVE GRIEVANCE HANDLING:
RESPONDING TO THE ALLEGED PERPETRATOR

- Advise the person of the allegations as soon as possible.
- Deal sensitively, impartially and fairly with the individual.
- Recognise, acknowledge and understand their emotions at this time.
- Avoid the use of terms such as ‘complaint’, eg explain that you need to explore some events.
- Ask the individual to tell you their perception of events at the time/place described by the aggrieved – if possible, avoid saying “x says you did such and such on Friday”. Instead, ask them what happened on Friday (less threatening, non-judgemental).
- Clarify what they have told you (check your understanding).
- If appropriate, explore their understanding of the standards of behaviour required by you / the organisation. Encourage the individual to reflect on their behaviour.
- Give the person a copy of this manual
- If the individual acknowledges that some aspects of their behaviour may have been perceived as inappropriate, accept that and concentrate on a resolution, eg it is not necessary to get admittance to the exact number of times this may have happened.
- Explain that you are trying to achieve a resolution to this issue and ask what they would see that looking like.
- Reassure the individual that the grievance procedure, whether informal or formal, is not a discipline procedure, it seeks to achieve a resolution to restore professional relationships.
- If the individual does not acknowledge the alleged behaviour, explain clearly that if the aggrieved perceives it to continue, it will be necessary to investigate the matter more formally, possibly under the discipline procedures.
CHECKLIST FOR EFFECTIVE GRIEVANCE HANDLING:
RESPONDING TO POLICY/ PROCEDURAL COMPLAINTS

Whilst local supervisors or managers cannot always directly resolve matters relative to application of policy or procedure, they can, nonetheless, facilitate resolution in many cases. In addition to the previous guidance notes, the following points should be considered:

- Does the complaint relate to a selection procedure? If not, who was responsible for the decision in question? Liaise with that person.
- If the complaint does relate to selection, personally liaise with the person(s) concerned who made the selection with a view to researching why the aggrieved person was unsuccessful. Don’t abdicate resolution to this person/persons.
- Did the debrief give the aggrieved sufficient understanding of the reasons he or she was not selected, i.e. areas of weakness to be developed? Why they were not considered to meet the criteria.
- If the aggrieved does not accept the explanation for non-selection, are there any further issues to support their complaint of unfairness e.g. was the selection process properly carried out against justified criteria? Liaise with EOA for guidance.
- The competitive process must be taken into account and it may rightly be that the aggrieved was not the best applicant on the day or for the job. Consider working with the aggrieved to prepare an action plan for their future development (this will help maintain motivation whilst they are still in your section).
- If the complaint is that they were selected (e.g. for transfer to another shift or location), were they selected by a fair process? Liaise with the selectors to establish what factors were taken into consideration.
- Where the policy decision does not relate to selection, was the decision consistent with those taken previously? Was the aggrieved treated differently in similar circumstances? If so, why?
Was the decision directly based on the aggrieved’s sex, marital status, race, colour, ethnic or national origin, sexual orientation, religion, creed, age or disability? If so, refer to the EOA.

Show theaggrieved you are genuinely concerned to find out about the matter and what can be done if an injustice has occurred.
INVESTIGATING GRIEVANCES RELATING TO HARASSMENT OR BULLYING

All complaints of discrimination on grounds of sex, marital status, gender reassignment, race, religion or belief, disability, sexual orientation or age MUST be documented and notified to the EOA, even if resolved informally.

Employees may complain of behaviour they find offensive, even if it is not directed at them.

Employers are potentially liable for harassment of staff by a third party, i.e. someone they do not employ. This covers sex, age, disability, gender re-assignment, race, religion or belief and sexual orientation.

G.1

(a) Very often complaints of bullying or harassment will need to be dealt with by way of discipline, not the Grievance Procedure, but if, with regard to section 4.7, it is decided to progress the issue via grievance, the following guidance should be adopted.

(b) A complaint of sexual harassment presents particularly sensitive problems for those entrusted with investigating the allegation. The situation will often be highly-charged emotionally and the investigator must be seen as being fair to both sides.

(c) From both a staff welfare and legal perspective, it is imperative that any report of harassment or bullying is treated seriously and that an investigation is carried out immediately.

(d) The rights of the alleged harasser must also be protected, recognising that as well as being liable to appropriate disciplinary sanctions, a finding of sexual harassment may leave an indelible stain on the character of the perpetrator, seriously affecting future career prospects. However, it must be remembered by the investigator that the burden of proof in such cases is the balance of probabilities not beyond all reasonable doubt.
(e) It is most important to understand that the very process of bringing a complaint and relating the circumstances may prove an ordeal for the applicant and therefore the need for sensitivity is paramount. Confidentiality must also be carefully observed and information obtained as a result of the investigation should only be revealed to those with a need to know.

G.2 In exceptional circumstances it may be appropriate to allocate an ‘independent’ person to investigate the matter (seek advice of the Equal Opportunities Adviser), but in most cases, local management should undertake this function.

G.3 Interviewing the applicant (non-inquisitorial interviews)

(a) This type of situation will generally require a different approach to conducting inquisitorial interviews and the following guidance is not intended to be condescending.

(b) The initial interview should be directed at ascertaining the factual situation from the complainant’s perspective. Where the complaint concerns alleged sexual harassment, support or representation from an individual of the same gender should be available (see Paragraph 4.3.3).

G.4 In cases of alleged harassment, the kinds of questions the investigator should be asking include:

- “explain what happened;”
- “who was involved?”
- “when did the incident take place?”
- “where did the incident take place?”
- “how did you react?”
- “was this the first time the conduct occurred or has it happened previously?”
- “did anyone else see this or a previous incident?”
- “did you speak to anyone else about this or a previous incident?”
- “is there any other physical evidence or documentation of the incident?”
- “how has it affected your work?”

The kinds of questions which **should not** be asked include:

- “what were you wearing at the time?”
- “did you do anything to lead him/her on?”
- “surely, he/she was only joking?”
- “I know the person you’re talking about and I can’t believe they would harass/bully someone. Are you sure there isn’t some misunderstanding?”
- “do you really want me to take this complaint further?”

**G.5 The accused’s explanation**

Obviously, before any decision is reached, the accused harasser must be given a full and fair opportunity to put their version of events.

In cases of alleged sexual harassment, there are three main explanations that the accused perpetrator may give:

- “I did it, but I thought she/he wanted it.”
- “I did it, but I didn’t think it would bother her/him.”
- “I didn’t do it.”

Each of these responses raises different issues for the investigator.

**G.6** Suspension of staff involved in the enquiry would not usually be considered unless the inquiry was being carried out as part of disciplinary or criminal investigation procedures.
G.7 Determining if behaviour was unwelcome/inappropriate

The key factor in these situations is establishing whether the reported behaviour was unwelcome, unwanted or otherwise inappropriate. It will be up to the investigator to make the assessment, on the balance of probabilities.

It there is some indication that the conduct was welcome or where there are doubts as to the credibility of the complainant, the complainant’s case will be considerably strengthened if she/he made a contemporaneous complaint or protest. This may be particularly important when the alleged harasser may have had some reason, such as a prior consensual relationship, to believe that the advances would be welcomed.

Therefore, an investigation should attempt to ascertain evidence of the circumstances and nature of any complaints or protests, whether to the alleged harasser, higher management, co-worker or others.

However, a previous complaint or protest should not be regarded as essential since it must be recognised that victims may fear repercussions from complaining about the harassment and that such fear may explain a delay in opposing the conduct. Moreover, it is often the case that the recipient will believe initially that he/she can resolve the situation herself or that it will soon stop. If the victim failed to complain or delayed in complaining, the investigation must ascertain why.

G.8 Failure to recognise when conduct was offensive/inappropriate

The situation where the conduct is admitted, but the perpetrator claims that he/she did not know it offended the recipient, is in most ways the easiest for the investigator to handle.
Implicit in such a case is that if the perpetrator understood that the behaviour was offensive, she/he would not have acted in that way. This is the kind of complaint which can usually be resolved informally, with the aim of both parties being able to resume their working relationship without further repercussions. In some instances, it may be desirable to bring both persons together, with the investigator acting as conciliator, to encourage each person to understand the other’s behaviour. It is also a classic situation where training of the perpetrator in what harassment means is necessary.

G.9 Evaluating evidence of harassment

There are greater difficulties where the alleged perpetrator flatly denies that the harassment took place:

(a) Here, it must be recognised that harassment, and, in particular, sexual misconduct, for obvious reasons, may take place without any eyewitnesses. Even sexual conduct that occurs openly in the workplace may appear to be consensual. Thus, the resolution of a sexual harassment complaint often will depend upon the credibility of the parties.

(b) In such circumstances, it may be of particular importance to determine whether corroborative evidence of any nature is available. Supervisory employees and co-workers should be asked about their knowledge of the alleged harassment and, in particular, any witnesses should be interviewed.

(c) Lack of corroborative evidence, of course, should not be fatal to a complaint but it may be decisive where such evidence logically should exist. However, the investigator should be mindful that some individuals will be reluctant to ‘get involved’ and hence deny any knowledge where it actually exists. In these circumstances the investigator should carefully explain the importance of obtaining any information and reassure the individual in respect of confidentiality issues or fears of victimisation.
(d) Even if there are no witnesses to the conduct itself, corroborative evidence may be provided by persons who observed the applicant’s demeanour immediately after the alleged incident. Therefore, persons with whom the complainant discussed the incident should be interviewed. It may also be advisable to ascertain from other employees whether they noticed changes in the complainant’s behaviour at work or in the alleged harasser’s treatment of him/her.

(e) The question should also be asked as to whether other members of staff had also been treated in similarly inappropriate ways by the alleged harasser. How widely this line of questioning should be pursued should become apparent to the investigator during the course of enquiries relating to the immediate workplace. Advice should be sought before embarking on this course of action and the reasons, objectives and from whom advice was obtained must be recorded. The more people that are involved in the enquiry, the more the issue of confidentiality becomes at risk, and hence it is not advisable to undertake general ‘trawls’ of staff without there being good cause to think it to be relevant. Any actions that may provide grounds from which allegations of a ‘fishing exercise’ could be made by the alleged harasser should be carefully considered and documented before embarking on them.

G.10 Statements

For the purpose of Grievance or Employment Tribunal Procedures, statements are not required to be on official statement forms, but should be signed by the individual and dated. Before they give a statement, individuals should be advised that the information they give may need to be disclosed to the applicant, management or, in exceptional circumstances, a tribunal. They should however, be encouraged to assist and given appropriate support and feedback during the investigations.
G.11 Resolution

Once the research is complete, both the applicant and the accused should be promptly informed of the conclusions which the manager or supervisor dealing with the grievance has made, having considered all the facts on the balance of probabilities. The way forward to rebuilding a professional working relationship between the parties must then be negotiated, remembering that the investigation here described is not a disciplinary process. It may be appropriate, for example, to develop a form of action plan or ‘contract’ to be agreed by the parties, in recognition of future conduct.

If, after a thorough investigation, the manager feels it would be appropriate to consider moving the perpetrator then the EOA or HR Manager should first be consulted. In serious cases the collected evidence may deem it appropriate to invoke disciplinary proceedings at which point the grievance will be concluded.

If it is determined that the allegations were not well-founded, it will be necessary to consider what steps need to be taken to maintain or restore the working relationships.

G.12 Role of managers to monitor

Managers will be responsible for taking action once they are aware of problems in respect of an employer’s ‘duty of care’ and also for monitoring the ongoing situations once a matter is considered ‘resolved’. It is also the manager’s responsibility to ensure any training needs identified in the course of the investigation are actioned.

G.13 The Equal Opportunities Adviser MUST be notified where managers wish to deal with potentially unlawful discrimination matters ‘informally’. Such information will be held in confidence but will be monitored to ensure such behaviour is tackled effectively. (See Appendix A)
HARASSMENT AND BULLYING

H.1.1 People are becoming more willing to identify instances of bullying and harassment, but it is still a problem which people too often suffer in silence, eventually succumbing to sickness absence or leaving the organisation. Even when an aggrieved person has resorted to resignation, the problem does not necessarily go away for the organisation. It will often move onto somebody else, in some cases, the entire workgroup.

H.1.2 People will sometimes see examples of such treatment as ‘personality clashes’ and ignore the situation. Other people (not themselves ‘victims’) might see the perpetrator as a ‘strong or firm manager’. It may be necessary to bring about changes in management styles and attitudes.

H.1.3 Some people will make excuses for not dealing with the behaviour, such as “he/she retires soon…”, or “it’s a stressful job”, or “he/she has always been like that, it’s their style”. This is not acceptable.

H.1.4 Sometimes victims will feel a (mistaken) loyalty towards the perpetrator because of their seniority or length of service etc.

H.1.5 Many perpetrators do not realise the impact of their style upon individuals. Some people conclude that if only one person in a group is upset by the treatment it is they who must have the ‘problems’, i.e. they are ‘too sensitive’ or this ‘isn’t the job for them’. This is not the case.

H.2 What is harassment or bullying?
In all cases, it is unwanted treatment.

A new legal definition was introduced in 2003 in relation to race, religion or belief and sexual orientation:
“(1) For the purpose of these regulations, a person (“A”) subjects another person (“B”) to harassment where, on the grounds of…………A engages in unwanted conduct which has the purpose of –
   a. violating B’s dignity; or
   b. creating an intimidating, hostile, degrading, humiliating or offensive environment for B

(2) Conduct shall be regarded as having the effect specified in paragraph 1a or b only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.”

Forms of harassment may include:

- physical contact ranging from touching to serious assault
- verbal and written harassment through jokes, offensive language, gossip and slander, sectarian songs, letters, e-mails, and so on
- visual display of photographs, postcards and posters, graffiti, obscene gestures, flags, bunting and emblems
- isolation or non co-operation at work, exclusion from social activities
- coercion ranging from pressure for sexual favours to pressure to participate in religious/political groups
- Intrusion by pestering, spying, following and unwanted telephone calls (stalking)

**H.2.1** Bullying has been described as:

- being made to feel inadequate
- persistent unwarranted criticism or condemnation
- to publicly humiliate or undermine an individual
- intimidation on a regular or persistent basis

**H.2.2** It can also take on less obvious forms such as:
- setting objectives with impossible deadlines
- constantly changing working guidelines
- removing areas of responsibility
- ignoring or excluding the individual

**H.2.3** What less obvious signs should management be aware of?

- rising sickness and absenteeism rates
- lack of motivation from individuals or team
- low morale
- loss of respect for management, supervisor and themselves

Managers and supervisors should ensure they regularly ‘walk the job’ and know their workgroup; monitor relevant workforce information; be aware of their own behaviour and identify as a role model.

**H.3** What can be done if harassment or bullying is identified?

**H.3.1** An informal approach is often successful if the perpetrator is told by the victim that their behaviour is unwarranted and must stop (see Appendices D, E, F and G).

**H.3.2** If the ‘informal’ process does not cause the harassment or bullying to stop, the aggrieved has the option of invoking either formal grievance or requesting disciplinary action. Line management must take all such complaints seriously and ensure matters are properly investigated as quickly as possible (see Appendix G). If complaints are not dealt with promptly and effectively, there might be a possibility of an Employment Tribunal claim being invoked.
(I) COMMUNICATION ISSUES

I.1 Listening

I.1.1 Good listening is about receiving messages without distorting them, because of our own thoughts, opinions, prejudices and feelings. It is about taking in the whole picture - the non-verbal signals as well as what is said, so it involves using our eyes as well as our ears. Good listening also means understanding the feelings which underpin what is said - the music behind the words.

I.1.2 Skilful communicators are the people most likely to resolve grievances effectively. The most effective communicator is the person who listens to and understands what people are saying and is able to respond appropriately. Most of us like to think we are good listeners, but are we?

I.1.3 Think about how you know when someone is listening to you. You will probably have identified some of the following:-

- good eye contact
- they look interested
- they don’t interrupt you
- they don’t immediately start talking about themselves
- they encourage you to talk
- any questions they ask, help focus on your case
- what they say shows they have understood you

I.1.4 Good listening involves three key skills:-

- Following - asking questions to check understanding summarising
- Full Attention - inviting them to talk open approachable body language
nods, shake of head
balanced, gentle eye contact
“ums” and “ahas” etc. to reassure
silences to allow the person to think

- Reflecting - reflecting feelings or words back to the speaker.

I.1.5 Techniques to enhance listening

Have a reason for listening
Suspend judgement initially
Resist distractions, focus on the speaker
Wait before responding
Try repeating what the speaker has said
Listen through the words for the real meaning
Be ready to respond to what has been said
Use time to reflect on content and search for a meaning - silence is a listening tool

I.2 Barriers to communication

I.2.1 It is helpful for anybody trying to resolve a grievance, whether informally or formally, to be aware of the types of barriers which exist to communication. You can then be better prepared to confront or interview people involved.

I.2.2 Physical barriers: environment - interruptions etc.
distance/proximity of communicators
hot and cold
an individual’s state of health
an individual’s speech pattern and articulation
(accent, dialect etc.)

Perceptual: hostility of the interviewee
charisma of the interviewer
past experiences
hidden agendas
stereotypes - images and expectations
emotional blocking
status - “I can’t talk to senior officers”
defensiveness; denial

I.3  Talking to the Parties involved

I.3.1  Distress to any party should be avoided at all costs and thus any hostility emerging must be kept in check by ensuring that remarks and questions remain relevant and objective. The process should be aborted if it becomes destructive and distressing. Establishing ground rules at the outset will usually be necessary.

I.3.2  Relationships soured by conduct issues are unlikely to emerge harmonious from a grievance situation, but the end result should aim for understanding between the parties and agreement as to how they will manage the continuing working relationship.

I.3.3  Very often, a (genuine) apology is a most effective means of ‘resolution’. Where mistakes have been made, it is far better to admit to these and show a positive plan to put things right for the future than to try to deny the problem or action and risk losing respect and credibility. ‘Digging heels in’ generally solves nothing and if the problem is not acknowledged and put right, it will be sure to recur.

I.3.4  If a dispute has arisen between a supervisor and their subordinate, it can be difficult for managers to try to correct mistakes that might have been made because of cultural sense of ‘loyalty’ or not wanting to be seen to appear to undermine the supervisor’s position. The manager should ensure that all the facts and evidence have been considered and if it emerges that the supervisor’s decision was misjudged it should be corrected quickly and in a way which is constructive, supportive and developmental for the supervisor.
I.3.5 It is imperative that supervisors and managers deal with issues of attitude and behaviour on a day-to-day basis. Appraisals should always be honest and developmental. From time to time, it may be necessary to initiate discipline or capability procedures, having sought advice from HR Department. If issues are not dealt with in the early stages, and a grievance or more serious discipline issue later arises, this can place the local management in an embarrassing position, and the situation will undoubtedly be more difficult to deal with than it need have been.

I.3.6 If an (alleged) perpetrator denies the allegations being made, explain that you are looking to achieve an understanding of what has or has been perceived to have occurred. You are advising them of the perceptions of other parties and that the expected standards of conduct and you will be investigating and monitoring the situation. Be fair, but firm.

I.3.7 When it becomes necessary to speak to an aggrieved person or an alleged perpetrator, consideration of the following points could be helpful:

<table>
<thead>
<tr>
<th><strong>DO</strong></th>
<th><strong>DON'T</strong></th>
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<tbody>
<tr>
<td>Recognise and acknowledge emotions, effects</td>
<td>Ignore feelings, focus only on facts</td>
</tr>
<tr>
<td>Give notice of the meetings</td>
<td>Give too long an introduction</td>
</tr>
<tr>
<td>Prepare and plan</td>
<td>Waffle</td>
</tr>
<tr>
<td>Invite the person to bring a Representative</td>
<td>Make premature judgements</td>
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<tr>
<td>Meet in a suitable environment (no interruptions)</td>
<td>Make assumptions</td>
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<tr>
<td>Explain the purpose of meeting</td>
<td>Play the psychologist</td>
</tr>
<tr>
<td>Listen closely</td>
<td>Give advice</td>
</tr>
<tr>
<td>Observe closely</td>
<td>Take over</td>
</tr>
<tr>
<td>Encourage the interviewee to talk about how they feel</td>
<td>Interrupt</td>
</tr>
<tr>
<td>Reflect and summarise</td>
<td>Interrogate</td>
</tr>
<tr>
<td>Use open questions to elicit the full picture</td>
<td>Talk about yourself</td>
</tr>
<tr>
<td>Be impartial</td>
<td>Argue</td>
</tr>
<tr>
<td>Maintain eye contact</td>
<td>Be distracted</td>
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<tr>
<td>Nod, shake head appropriately</td>
<td>Break confidences</td>
</tr>
<tr>
<td>Allow silences, time for thought</td>
<td>Gossip</td>
</tr>
<tr>
<td>Display open, approachable body language</td>
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<tr>
<td>Be specific</td>
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<td>Explain any procedures</td>
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<tr>
<td>Establish facts</td>
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<tr>
<td>Identify options</td>
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<td>Find out what the individual wants</td>
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<td>Allow individual to decide</td>
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<tr>
<td>Construct an action plan</td>
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<tr>
<td>Ensure action is taken</td>
<td></td>
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<tr>
<td>Seek further advice if necessary</td>
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</tbody>
</table>

**I.3.8**  
You may consider there is value in bringing the parties concerned together to discuss the issues involved. The aggrieved must decide whether this should happen and on no account should this situation be forced upon any of the parties concerned. All parties would, of course, have the right to be accompanied by a representative as per paragraph 4.3.1.

**I.3.9**  
If this action does arise, it is helpful if you take a role of facilitator as opposed to judge and jury and get the parties involved to regard the meeting as a forum to develop understanding about how they each feel in respect of the problem that exists or actions that have taken place.

**I.3.10**  
You might be required to prompt and steer but remember silences can also be very beneficial.
HOW TO INVOKE A GRIEVANCE

J.1 CHECKLIST - INVOKING A GRIEVANCE

- Be clear what your grievance is (it is helpful to complete the preliminary section of a grievance form).
- Be clear what you want by way of resolution - is this practical and reasonable?
- Establish the facts of your grievance - try to be as clear as possible what your complaint is about. If you can, list dates and times, name people involved and anyone else who might have been present. If you are complaining about the way you have been treated compared to someone else, describe the treatment and name the comparator. Ask specific questions such as who made the decision (policy or selection)?; why were you treated differently?; what is the evidence for making that comment (e.g. on an assessment)?; what part of the criteria did you not meet (selection)?; who else was considered for this posting and why were you selected as opposed to the others?
- Do not feel guilty about making a grievance.
- Have you approached the source of the grievance directly and made your feelings known? You could do this by letter if you prefer.
- Do you have a friend at work or a supervisor or manager that you can talk comfortably to about the problem?
- Have you contacted an Essex Police Grievance Adviser or Union representative. See Section 5 - ‘Useful Contact Numbers’.
- Have you told your immediate supervisor or manager about the problem? Have you discussed options and agreed a course of action?
- If you feel you are being discouraged from raising your grievance, contact a Grievance Adviser or the Equal Opportunities Adviser immediately.
- Can somebody else approach the source of your complaint on your behalf if you cannot approach them yourself?
- Keep notes about what has happened, including dates and details (especially if you cannot yet talk about the problem).

- Do you think the problem constitutes a disciplinary matter and if so do you want to make a complaint under the discipline systems? (In many cases, you do not have to if you don’t want to).

- Generally, if you decide to try and resolve your grievance informally no records will be retained by management (unless the matter involves allegations of potentially unlawful discrimination).

- If you decide to invoke the formal Grievance Procedure, complete the Grievance Registration Form immediately.

- If your grievance is of a particularly sensitive nature you can invoke a formal grievance via a Grievance Adviser or Union representative.

- Are you aware of your right to representation? (See 4.3).

- Are you being updated as to the progress of your grievance?

- You should not suffer victimisation as a result of having invoked the grievance procedure. Contact a Grievance Adviser or the EOA if this happens. There is no requirement to evidence that you have been less favourably treated than a person who has not made or supported a complaint.

- If the problem concerns bullying and other people have been treated the same, you could consider making the grievance as a group.

- If the situation has been especially traumatic for you, the Welfare Section can advise you about the availability of Supportive Counselling Services.

- There are internal staff network groups who can also give support if your concern is about race, sexuality or womens issues – contact the EOA for further information.
THE BUSINESS CASE FOR EFFECTIVE GRIEVANCE RESOLUTION

The consequences of poor management of problems and discrimination are indisputable:

- **Damage to staff morale and diminished performance**

  Individuals do not perform to full potential; other members of the workgroup can be similarly affected. Service to the public can therefore be diminished.

- **Sickness absence**

  Direct losses in costs and performance. Could also be knock-on effects if other members of the team have to cover a role for a prolonged period. Service to the public can therefore be diminished.

- **Wastage rates**

  Direct losses/costs during recruitment process; loss of investment in training, knowledge and skills; further loss of effectiveness until the new appointment is “up to speed”. Service to the public can therefore be diminished.

- **Financial costs of Employment Tribunal cases**

  There is no limit to the amount an Employment Tribunal can award in compensation to those who bring successful complaints of discrimination against the organisation and individuals within the organisation. Legal and administrative costs are over and above this and can be considerable, even if the case stops short of a tribunal hearing.

- **Bad publicity**

  This can damage reputation and credibility in the community, with enduring consequences for local policing and recruitment.

**Effective resolution will reduce losses in the above situations.**
USEFUL DEFINITIONS (Discrimination)

SEXUAL HARASSMENT:

“Unwanted conduct of a sexual nature, or any other conduct based on sex, affecting the dignity of women and men at work”

(From the European Commission Code Of Practice, case law has established this definition also applies to race and disability).

VICTIMISATION:

Whilst applicants may often use the term ‘victimisation’, there is a specific definition in law. When a complaint of unlawful discrimination has been made (see below) both the applicant and any witnesses are protected from victimisation whilst the matters are being investigated / brought to hearing and after the investigation / hearing is complete. i.e. a person may take a stand alone claim of victimisation to an ET if they have been victimised as a result of having previously made a complaint.

There is no requirement for the applicant to evidence that they have been less favourably treated than a person who has not made or supported a complaint.

When is such a complaint deemed to have been made? When the victim brings the matter (‘allegation’) to the attention of the organisation (be it informally or formally, to a supervisor or manager).

DIRECT DISCRIMINATION:

To claim unfair treatment the victim needs to show:

♦ Treated differently
Because of: sex, race, disability, age, religion or belief or sexual orientation, gender re-assignment, marriage or civil partnership, pregnancy or maternity.

This was unjustifiable

They suffered a detriment

**DISCRIMINATION BY ASSOCIATION**

Direct discrimination against someone because they associate with another person who possesses a protected characteristic:

Because of: sex, race, disability, age, religion or belief or sexual orientation, gender re-assignment

**DISCRIMINATION BY PERCEPTION**

Direct discrimination against someone because other think they possess a protected characteristic:

Because of: sex, race, disability, age, religion or belief or sexual orientation, gender re-assignment

**INDIRECT DISCRIMINATION:**

To claim unfair treatment the victim has to show:

Policies, practices or procedures applied equally to all, have a disproportionate effect on a social group based on sex, race, age, sexual orientation, religion or belief, disability, gender reassignment marriage and civil partnership, i.e. members of such a group are disadvantaged by the action.
DIGNITY AT WORK POLICY

1. STATEMENT

The Police and Crime Commissioner (PCC) for Essex is promoting ‘Dignity at Work’ as part of its equality of service Equal Opportunities strategy. The PCC accepts this is an organisational issue and there is clear commitment to promote and deliver on this policy, including the adoption of training. Fair treatment of staff is crucial to equality of service delivery by a modern policing service. The PCC recognises that its most important asset is its employees and the fair treatment of staff is crucial to the success of the organisation. Racist, sexist, homophobic or other prejudicial behaviour has no place in this vision. Direct discrimination in the form of harassment or bullying is viewed as a serious matter and may involve dismissal from the service in cases of gross misconduct. The principles of this policy also apply to third parties, e.g. contractors, agencies using PCC premises.

2. INTRODUCTION

The PCC recognises that managers, supervisors, officers and employees must accept the principles contained in this policy if we are to achieve equality of service delivery. All employees have a positive duty to support the organisation by promoting a ‘Dignity at Work’ culture and maintaining professional standards. The objective of this policy is to support the elimination of any harassment, bullying or inappropriate behaviour.

Eradication of unacceptable behaviour can only be achieved by:
• Raising awareness of accepted standards;
• All staff being mindful that their attitudes and behaviour have a direct impact on the people they work with;
• All employees being vigilant and aware of the behaviour of their peers;
• Supervisors and managers taking active leadership, firm management and positive supervision;
• Where appropriate, effective use of performance and discipline procedures to deal with unacceptable behaviour;
• Creation of a supportive environment in which issues can be raised in an open manner without fear of intimidation.

3. LEGAL OBLIGATIONS:

This policy has the legal basis with the Health and Safety at Work Act 1974, Employment Rights legislation and Equality Act 2010.

It is important that individual managers and supervisors understand that they may be culpable for either their inappropriate actions or failure to exercise responsibility in taking remedial action to eliminate inappropriate workplace behaviour.

4. WHAT IS INAPPROPRIATE BEHAVIOUR?

Harassment
Harassment is improper and inappropriate conduct, which the victim views as unwanted and unwelcome or is otherwise deemed inappropriate. It may be persistent behaviour or a more serious but isolated incident and may be directed towards one or more individuals. Employees may complain of behaviour they find offensive, even if it is not directed at them.

Employers are potentially liable for harassment of staff by a third party, i.e. someone they do not employ. This covers sex, age, disability, gender re-assignment, race, religion or belief and sexual orientation.
It is not possible to produce a definitive list of inappropriate behaviour within the workplace, which could constitute harassment, but it could include:

- Unwanted physical contact ranging from touching to serious assault or threatened assaults;
- Suggestive remarks or gestures; gossip and slander;
- Offensive comments, jokes and banter; insults or ridicule;
- Display of pin-ups, graffiti, offensive or suggestive writings (including items viewed on the Internet or sent by e-mail);
- Isolation or non co-operation at work, exclusion from social activities;
- Coercion ranging from pressure for sexual favours to pressure to participate in religious/political/other groups or activities;
- Intrusion by pestering, spying, following, stalking and unwanted telephone calls or ‘e-mails’;
- Sexual / racial / disability stereotyping which results in employment opportunities not being afforded to an individual.

**Bullying**

Bullying can be perceived in both overt (obvious) and covert (discreet, subtle) forms. Inappropriate behaviour within the workplace that could constitute bullying includes:

- Offensive, intimidating, malicious, insulting or humiliating behaviour that undermines an individual or group of employees and which may cause them to suffer stress;
- Constant criticism or picking on people in front of others or in private; making them appear incompetent and feel inadequate (a gradual ‘wearing down’ process);
- Removal of responsibilities and replacing with trivial duties instead; undermining a person’s position by overturning their decisions etc., without good reason;
• Refusing to allow people to express an opinion, insisting that a certain way of doing things is always right;

• Not recommending applications for promotion, training or development without evidenced justification;

• Treating new staff, probationers or trainees as ‘servants’;

• Setting unrealistic deadlines, overloading with work, giving work that the individual is not trained to do or which is outside their levels of responsibility or ability;

• Shouting at people in order to get things done.

Victimisation

Victimisation will not be tolerated by the organisation. In the event of victimisation occurring, the PCC will take reasonable measures to eliminate such practice.

5. WHAT the PCC EXPECTS FROM MANAGERS AND SUPERVISORS

In order to ensure ‘Dignity at Work’ all managers and supervisors should be prepared to take the initiative and intervene in any situation involving inappropriate workplace behaviour. Well-considered and constructive challenges should be part of a manager’s and supervisor’s role and will ensure achievement of higher standards of service delivery and organisational performance.

Where individuals do not perform their duties to the required standard the capability procedures are available and specialist advice on the application of these procedures are available from HR. Managers and supervisors at all times need to adopt a positive, interventionist and supportive approach with a view to raising levels of performance and standards. Managers will only be supported where they address in a considered manner inappropriate working practices or behaviour, or where the standard of service provided falls below that expected.

Managers are expected to familiarise themselves with guidelines to assist with the management of stress.
Where managers are dealing with unfamiliar situations they are encouraged to use the available HR support including the HR Liaison Officer. Their role will be to support and advise the manager but not to tackle the problem on behalf of the manager.

Managers and supervisors are legally responsible for addressing problems in their area of work. There is a duty on all staff to support the ‘Dignity at Work’ policy.

6. DEALING WITH INAPPROPRIATE BEHAVIOUR

Victim

The PCC is committed to supporting individuals who promote the ‘Dignity at Work’ culture and positively encourages victims to come forward.

- You should not be afraid to object about inappropriate treatment;
- You may wish to initially attempt to resolve the inappropriate behaviour informally and where appropriate;
- Explain to the individual why their behaviour is unacceptable;
- If the above actions are not suitable or if the inappropriate behaviour does not cease you have an obligation to tell a supervisor or manager (not necessarily the victim’s own supervisor or manager), giving the organisation an opportunity to take positive action;
- Keep a record of all the inappropriate behaviour that occurs - dates, times, what is said/done, who (if anyone) is present and who you have told;
- Retain evidence i.e. letters, notes etc.;
- If the source of the inappropriate behaviour is your immediate supervisor/line manager and informal attempts to resolve the issue have been unsuccessful, you should raise the issue with their line manager;
- If the issue is not resolved then please tell us using the advice and support networks recommended within the policy.
Supervisor/Manager

- Any supervisor or manager receiving a complaint of inappropriate behaviour will ensure the matter is suitably recorded;

- Where appropriate the issue should be addressed by the individual’s immediate supervisor or line manager, taking account of the sensitivity of the issues involved, e.g. a woman victim of harassment may prefer to speak to a female in the first instance, and future behaviour monitored;

- All serious misconduct matters will need to be referred initially to support managers or equivalent, who will seek advice either from Professional Standards Department for police officers or Personnel for support staff;

- Where allegations of sexual, racial, disability or trade union harassment are raised, a Grievance Registration form must be completed and sent immediately to the Equal Opportunities Adviser at Headquarters so that the investigation can be monitored. (Matters might still be resolved informally in some cases, but file notes must be kept and the EOA advised of the outcome).

7. ADVICE AND SUPPORT

Advice and support is always available from a staff representative, volunteer grievance advisor (VGA) or other support networks.

- Union
- HR specialists
- VGAs will be able to explain to you what options may be available and support you if required in the action you select
- Gay, Lesbian, Bisexual & Transgendered Network (NEXUS) via ☎️07669 162 487).
- Maternity Network.
- Consider professional advice from Occupational Health.

8. MONITORING AND REVIEW

The policy will be monitored by the Chief Executive of the office of the PCC.