

**26 NOVEMBER 2024**

**KEY DECISION: NO**

**REPORT NO. PEO2402**

**NEW PREVENTION OF SEXUAL HARASSMENT POLICY**

**SUMMARY AND RECOMMENDATIONS:**

This report seeks Cabinet's approval for the implementation of a new Prevention of Sexual Harassment Policy. This reflects a recent legislative change known as the Worker Protection Act that came into effect on the 26 October 2024.

This new law introduced enhanced responsibilities for employers to proactively prevent workplace harassment, specifically in relation to sexual harassment, and strengthens protections for all employees.

It is recommended that Cabinet approve the proposed Prevention of Sexual Harassment Policy as set out at Appendix 1 of the report.

**1. INTRODUCTION**

- 1.1. The Worker Protection (Amendment of the Equality Act 2010) Act came into effect on 26 October 2024. This Act places a legal duty for employers to proactively take reasonable steps to prevent sexual harassment in the workplace.
- 1.2. Under the new Act, organisations are required not only to respond to incidents of harassment but to take proactive measures to prevent such incidents from occurring in the first place. The measures include:
  - Implementing policies that actively prevent harassment in the workplace,
  - Training all employees and managers on recognising and addressing inappropriate behaviour
  - Creating a safe and supportive environment where employees feel comfortable reporting any concerns.
- 1.3 The Act also covers sexual harassment by third parties, such as customers, suppliers, clients or visitors.

**2. BACKGROUND**

- 2.1. The Council believes that all employees have the right to be treated with dignity and respect and strives to create a working environment that reflects this. A Dignity at Work Policy is already available providing managers and employees with information and guidance on how to address bullying and harassment in the

workplace. However, it is recommended that a separate Prevention of Sexual Harassment Policy is provided to reflect that sexual harassment is a specific form of harassment.

- 2.2. This policy will also demonstrate how seriously the council is taking its obligations to provide a safe system of work for all employees, providing a clear position that sexual harassment of employees will not be tolerated and it is unlawful, whether caused by colleagues or third parties including customers, suppliers, clients or visitors.
- 2.3. This policy applies to all employees and provides detailed guidance and reporting mechanisms for employees to raise concerns.

### **3. PREVENTION OF SEXUAL HARASSMENT POLICY**

- 3.1. The new Prevention of Sexual Harassment Policy specifically outlines the following:
  - The definitions of sexual harassment
  - What action will be taken to address it
  - How it should be reported and investigated
  - Roles and responsibilities
  - What support is available to employees affected by sexual harassment
- 3.2. Sexual harassment is the unwanted behaviour of a sexual nature which has the effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
- 3.3. Employers have a duty to protect the health, safety and welfare of their employees and others who may be affected.
- 3.4. The roles and responsibilities for Managers, Employees, the People Team and Unison (and any other body or individual representing employees) in preventing sexual harassment in the workplace are included in this policy as follows:
  - **Employees** have a responsibility for their behaviour and to modify if necessary, treat colleagues and any other individuals they come in to contact with through the course of their work with respect, report any sexual harassment that they may witness and undertake training/awareness sessions
  - **Managers** have a responsibility to demonstrate high standards of behaviour, be vigilant and aware of any issues, challenge any signs of sexual harassment, respond promptly to any complaints of sexual harassment, ensure a full investigation is conducted into any complaints raised and undertake training/awareness sessions
  - **People Team** have a responsibility to promote an environment free from sexual harassment, regularly review policy, record and monitor numbers of complaints, advise employees of their rights under this policy, support

Investigating Officers and arrange and participate in training and awareness sessions

- **Unison** has a role to provide advice and support through both the informal and formal stages to their members.

3.5 The policy includes the procedure for reporting sexual harassment recognising that employees who have been subject to sexual harassment may feel vulnerable and reluctant to raise a concern or may be unsure of how to raise one. All employees raising a sexual harassment matter will be listened to and all concerns will be taken seriously.

3.6 The process and procedure, included in the policy, encourages resolving issues quickly and informally in the first instance. Where the nature of the concern is so serious that informal resolution is not appropriate, or these processes have not succeeded in bringing about changes, a formal complaint should be raised. A workflow diagram is included as an appendix in the policy which will guide employees through the process.

3.7 Raising a sexual harassment matter can be distressing for all those involved and support is available through the Employee Assistance Programme (EAP) Helpline with advice and counselling together with support from the internal Employee Support Team. This team are equipped with the knowledge and skills to listen to any concerns and guide employees towards appropriate help as needed.

### **Alternative Options**

3.8 The Council could choose to not approve the Prevent Sexual Harassment Policy but this would be present a risk of not providing an up to date policy for all employees to refer to if they want to report a sexual harassment matter.

### **Consultation**

3.9 The new Prevention of Sexual Harassment Policy has been discussed with managers and Unison have also reviewed the policy and there are no changes to make.

## **4 IMPLICATIONS**

### **Risks**

4.1 The purpose of the implementation of the policy is to ensure that the Council reflects the legal duty required by employers to take reasonable steps to prevent sexual harassment between employees as well as harassment by third parties. The risks associated with not taking reasonable steps is that enforcement action may be taken and that it would have a negative impact on the personal and working life of individuals and on workplace culture and productivity.

## **Legal Implications**

- 4.2 If an employer does not comply with the preventive duty, they are breaking the law. The preventative duty is a new duty under the Equality Act 2010 which requires employers to take “reasonable steps” to prevent sexual harassment of their employees. An individual cannot bring a claim against their employer for the preventative duty. An individual must first bring a claim against their employer for sexual harassment. If the claimant is successful, a breach of the employment duty will automatically be examined. A breach of the duty may lead to an uplift in compensation by up to 25% at an Employment Tribunal. The amount awarded should reflect the gravity of the breach.

*S Thorp – Corporate Manager, Legal Services*

## **Financial Implications**

- 4.3 There could be an uplift in compensation by up to 25% awarded to an individual’s claim of sexual harassment if it is successful in an employment tribunal.

## **Resource Implications**

- 4.4 There are no resource implications associated with this policy.

## **Equalities Impact Implications**

- 4.5 This policy will have a positive impact by providing information and a process for individuals to raise a sexual harassment concern.

## **5 CONCLUSIONS**

- 5.1 The implementation of the new Prevent Sexual Harassment Policy will provide all employees with information and guidance on how to report a sexual harassment concern. All employees will be listened to and matters dealt with promptly. Support mechanisms are also provided. The Council will be reflecting their legal duty required by employers to take reasonable steps to prevent sexual harassment of employees, as well as harassment by third parties. The risks associated with not taking reasonable steps is that enforcement action may be taken and that it would have a negative impact on the personal and working life of individuals and on workplace culture and productivity.

## **APPENDICES**

A – Prevention of Sexual Harassment Policy

### **CONTACT DETAILS:**

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### **Prevention of Sexual Harassment Policy**

#### **1. Introduction**

Every employee has the right to be treated with dignity and respect and Rushmoor Borough Council aims to create a working environment that reflects this. This policy applies to all employees.

Sexual harassment will not be tolerated and it is unlawful. It can be destructive and can lead to stress, accidents, illness and poor performance. All employees are responsible for their own behaviour and are expected to behave in a way that promotes an inclusive, non-hostile work environment for themselves and their colleagues.

However, the Council recognises that there may occasionally be occurrences of sexual harassment and it is important that there is a framework in place to deal with such incidents. Where possible, such issues should always be resolved quickly and informally.

This policy outlines:

- The definitions of sexual harassment
- What action will be taken to address it
- How it should be reported and investigated
- Roles and responsibilities
- What support is available to an employee affected by sexual harassment

The Council will not tolerate sexual harassment in any form. Any employee found to have been involved in sexual harassment, or who raises or supports a concern that they know to be false, may face disciplinary action. Employees raising a concern of sexual harassment should be assured that it will be treated seriously and confidentially. They will not suffer any form of victimisation for raising a concern, nor for acting as a witness in an investigation.

#### **2. What is Sexual Harassment?**

Sexual harassment is a specific form of harassment, and it can often be subtle, indirect, or even unintentional. Sexual harassment is unlawful under the Equality Act 2010 ('the Act'). It is also unlawful to treat someone less favourably because they have either submitted a complaint of sexual harassment or have rejected such behaviour. Any third-party harassment

where a person is harassed by someone who is not an employee, including customers, suppliers, clients or visitors is also covered.

Under the Act sexual harassment is defined as occurring when a person engages in unwanted conduct of a sexual nature that has the purpose or effect of:

- Violating someone's dignity, or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment includes a wide range of behaviours including but not limited to:

- Sexual comments or jokes
- Displaying sexually graphic pictures, posters, or photographs
- Suggestive looks, staring or leering
- Propositions and sexual advances
- Making promises in return for sexual favours
- Sexual gestures
- Intrusive questions about a person's private sex life or a person discussing their own sex life
- Sexual posts or contact on social media
- Spreading sexual rumours about a person
- Sending sexually explicit emails or text messages
- Unwelcome touching, hugging, massaging or kissing
- Criminal behaviour, including sexual assault, stalking, grooming, indecent exposure and sending offensive communications
- Predatory behaviour
- Coercion

Sexual interaction that is invited, mutual and consensual is not sexual harassment because it is not unwanted, however this could change and become unwanted in time. An individual can experience sexual harassment from someone of the same or different sex.

Sexual harassment can be a one-off event and does not need to be directed at a person. It can be witnessed or overheard.

### **3. Application of the policy**

This policy applies to any unwanted conduct that occurs in the course of a person's work and which takes place at their place of work, including in their home whilst working from home, on their commute, or at/while travelling to a place which is not their place of work. This policy also applies to an offsite work-related activity, including a social event, business trip, training session or conference.

The sexual harassment of employees will not be tolerated, whether caused by those that work at the council or third parties including customers, suppliers, clients or visitors.

## **4. Roles & Responsibilities**

### **4.1 *Employers Duty of Care***

The law imposes a duty of care on employers to provide a safe system of work for all employees. This includes a specific obligation to protect the health, safety and welfare of their employees and others who might be affected. In discharging this legal duty, we recognise that there are certain measures that can help to prevent sexual harassment in the workplace.

We are committed to the adoption and operation of such measures, including:

- Good management practices: including anti-discrimination management practices, competent and respectful people management, awareness of the conditions that can allow sexual harassment to become prevalent and consistency in taking appropriate preventions and interventions (including prompt and unambiguous action to visibly demonstrate that concerns regarding sexual harassment will be taken seriously)
- Risk assessments: that include consideration of factors that can increase the risk of sexual harassment including: work-place stress, power imbalances, job insecurity, lone working, customer-facing duties.
- Awareness-raising: about the nature and impacts of sexual harassment, common reactions to sexual harassment and the requirement of respectful behaviour for employees to create a culture free from harassment and identify and address incidents when they occur.
- Appropriate and targeted training: on sexual harassment and about this policy for all employees, including managers at all levels of the organisation.

### **4.2 *Employees***

All employees have a responsibility to:

- Take responsibility for their behaviour and modify it if necessary
- Treat all colleagues, customers and any other individuals they come in to contact with through the course of their work with respect
- Be sensitive to the feelings of others and try to avoid causing offence or upset.
- Report any sexual harassment that they may witness
- Challenge any behaviours or actions from others that could be considered sexual harassment.
- Support and come forward for any complaints which they witness.
- Undertake training/awareness sessions

### 4.3 **Managers**

Managers have a responsibility to:

- Demonstrate high standards of behaviour and role model our Rushmoor values
- Be vigilant and aware of any issues, and to challenge any signs of sexual harassment amongst their employees and colleagues
- Respond promptly to any complaints of sexual harassment
- Ensure a full investigation is conducted into any complaints raised to them and to take responsibility for seeing the issue through to resolution in a timely manner
- Initiate the disciplinary process if sexual harassment is indicated.
- Undertake relevant training

### 4.4 **People Team**

The People Team have a responsibility to:

- Promote an environment free from sexual harassment
- Regularly review policy, and to record / monitor numbers of complaints
- Advise employees of their rights under this policy
- Support investigating officers in investigating complaints.
- Arrange appropriate training / awareness sessions

### 4.5 **Unison**

Unison has a role to provide advice and support through both the informal and formal stages to their members.

## 5. **Outline of terms**

For the purposes of this policy, the following terms will be used:

Person raising the concern	A person claiming to have been sexually harassed, or who finds the behaviour offensive but has not themselves been subjected to sexual harassment
Person complained of	The person alleged to have carried out the sexual harassment
Witnesses	Anyone who may have seen or heard the alleged sexual harassment
Responsible Manager	The person to whom the concern is raised and is responsible for appointing a mediator or investigating officer
Investigating Officer	The officer responsible for investigating any complaints of sexual harassment



## **6. Reporting sexual harassment**

The Council recognises that employees who have been subject to sexual harassment may feel vulnerable and reluctant to raise a concern, or may be unsure how to raise one. They may also worry that their concerns sound trivial and fear the repercussions of doing so, particularly if the concern relates to their manager or another senior colleague.

Employees should be assured that it is their right to raise matters of sexual harassment and that they will be listened to. They will not be subjected to any negative repercussions by raising a concern as long as it was raised in good faith and with genuine belief that there was a problem.

Any employee who believes that they have been subject to, or may have witnessed sexual harassment, is encouraged to report the issue at the very earliest of stages, i.e. as soon as possible after the first time such treatment occurs. Even if the concern is unfounded it doesn't mean there wasn't a genuine belief that sexual harassment was taking place.

Employees should be assured that any concern raised of sexual harassment will be taken seriously and will be fully investigated. It will be dealt with promptly, with sensitivity and in the strictest possible confidence.

## **7. Informal Resolution**

Employees are actively encouraged to try to resolve issues quickly and informally in the first instance. This approach aims to limit the damage caused to all parties and helps to maintain a positive working environment.

In some circumstances, the informal route will not be appropriate, for example if the person concerned has used violence towards the employee. In this instance, the issue should be raised as a formal complaint without delay. All matters should be addressed as soon as possible.

Employees are expected to keep and provide when required a written record of incidents, recording dates, times, what happened, any witnesses and their feelings at the time. The record can be used to provide specific examples of the behaviour causing concern at this informal stage or it may be used as evidence if the issue should become a formal complaint at a later stage. However, it is recommended that issues are reported or acted upon soon after they occur, as this will mean the incident is fresh in the mind of the person complained about.

If the concern is about a Councillor or a member of the public, this is not covered under this policy however the Sexual Harassment Report Form (see below) should be completed and raised with your line manager in the first instance.

### 7.1 *Talking to the person concerned*

Many issues can be resolved through informal discussion between the employee and the person to whom the issue is related, as this allows problems to be quickly resolved and helps maintain a positive working environment. Informal discussions are particularly effective in cases where the person complained of may not be aware that their behaviour is unwelcome or offensive. An informal discussion should lead to greater understanding between the parties involved and an agreement that the behaviour will cease.

Take time to plan what to say and ensure examples are provided of where the person's actions have caused offence or upset. The employee should explain how the other person's actions or behaviour made them feel and ask them to stop the behaviour that caused offence or distress. The person may not realise they are doing it or that they have caused offence.

### 7.2 *Talking to your line manager*

Alternatively, the person raising the concern may wish to discuss the matter with their line manager. The line manager may be able to talk to the person on their behalf, facilitate a meeting where the concerns can be raised, or offer advice on how to approach the situation.

### 7.3 *Writing a letter*

If the employee does not feel able to confront the person, and as a last resort before progressing to the next stage, they could consider writing down their concerns and sending it to the person concerned. It should state exactly what behaviours or actions the employee objects to, providing examples where possible, and it should ask the person to stop. Copies should be kept of any written correspondence.

## 8. **Formal Complaint**

Where the nature of the concerns is so serious that informal resolution is not appropriate, or these processes have not succeeded in bringing about the desired changes, a formal complaint should be raised.

### 8.1 *The process for raising a formal complaint (please see Appendix 1 for a summary flow chart):*

The employee raising the concern should complete the 'Sexual Harassment Report Form' outlining the allegations (**Appendix 2**). They should include the full details, whom the complaint is against, and give details of dates, times and places where issues have occurred, as well as the names of any witnesses.

The form should be given to the line manager or if their manager is the person they wish to raise the concern about, they may speak to the next level of management or a member of the People Team, who will then refer the matter to another appropriate manager. The manager to whom the formal complaint is raised will be the Responsible Manager who will oversee the process from this point forward.

The Responsible Manager will appoint an Investigating Officer, who is responsible for investigating any complaints of sexual harassment.

The Investigating Officer and a member of the People Team will assess if there is a need for further investigations. In most circumstances, the next step will be to investigate the matter with the employee raising the concern to establish further detailed facts.

The Investigating Officer and People Team member will then advise the person complained of that a complaint has been received if they are not already aware. If this is the first time they have been advised of an issue, they will be advised of the details of the complaint and be invited to a meeting to discuss further.

The Investigating Officer and a member of the People Team will interview the person complained of to establish detailed facts and to question their recollection of events and behaviours. Notes of the meeting will be taken and the person complained of will be asked to sign a set of notes that capture the key points of the discussion.

Following this initial stage, the Investigating Officer and People Team member will need to assess the information gathered.

If the case thus far suggests that there were witnesses to the issue, they should be interviewed and asked their recollections of the issue. They will also be asked to sign a set of notes that represent the key points discussed at interview.

At the end of the investigation, the Investigating Officer will submit a report to the Responsible Manager to enable a decision on what the next step should be.

The Responsible Manager will communicate the findings of the investigation to both the person raising the concern and the person complained of. They will also be advised of what happens next both verbally and in writing.

The Responsible Manager may decide that:

- There is insufficient evidence to progress the complaint further;
- There is some evidence of misconduct but the matter should be dealt with at the informal stage of the disciplinary procedure;
- There is evidence of misconduct and the matter should be dealt with at a formal hearing under the disciplinary procedure.

If the decision is taken to proceed to a formal hearing under the Disciplinary Procedure, the investigation and report produced under this procedure will become the basis of the management case at the disciplinary hearing without the need for further investigation. For further details, please refer to the Disciplinary Procedure.

## **8.2 *Right of appeal by person raising the concern***

The person raising the concern will receive feedback on the findings of the investigation, although the full investigation report may not be shared with them for reasons of confidentiality.

If they are unhappy with the findings, they have a right to appeal. The appeal should be addressed to the People Team and made in writing within seven calendar days of receipt of feedback on the outcome of the investigation. The grounds for any such appeal must relate to one of the following:

- The process of the investigation was procedurally flawed
- Their complaint has not been taken sufficiently seriously
- Significant evidence has come to light that is relevant to the case but has not been considered.

The People Team will appoint a suitable manager to review the report and consider whether the process of the investigation was fair and / or whether the conclusions are reasonable. There will be no re-investigation of the complaint, unless the investigation has been found to be fundamentally flawed.

If the decision is taken to move into the disciplinary process to address the actions of the person complained of, that person will, as part of the disciplinary process, have the right of appeal under the Disciplinary Procedure against any formal sanctions arising from the process.

The person raising the complaint has no right to appeal the outcome of the disciplinary hearing.

## **9. *Duty of Care***

From time to time, an employee will speak to a colleague, their line manager or a member of the People Team regarding sexual harassment. They often just want to talk the matter through with someone and to seek advice.

The employee may request that no further action is taken and this will be respected wherever possible.

However, the Council has a duty of care to all employees. If the issues raised are of a sufficiently serious nature, the employee's request for confidentiality may be overridden by the council's duty of care to all employees. For example, if issues are raised that affect the health (mental or physical), safety or well-being of employees these will need to be addressed. Employees will be told if this applies when they raise the issue. Care will be taken to address these issues without reference to the employee who raised the concern.

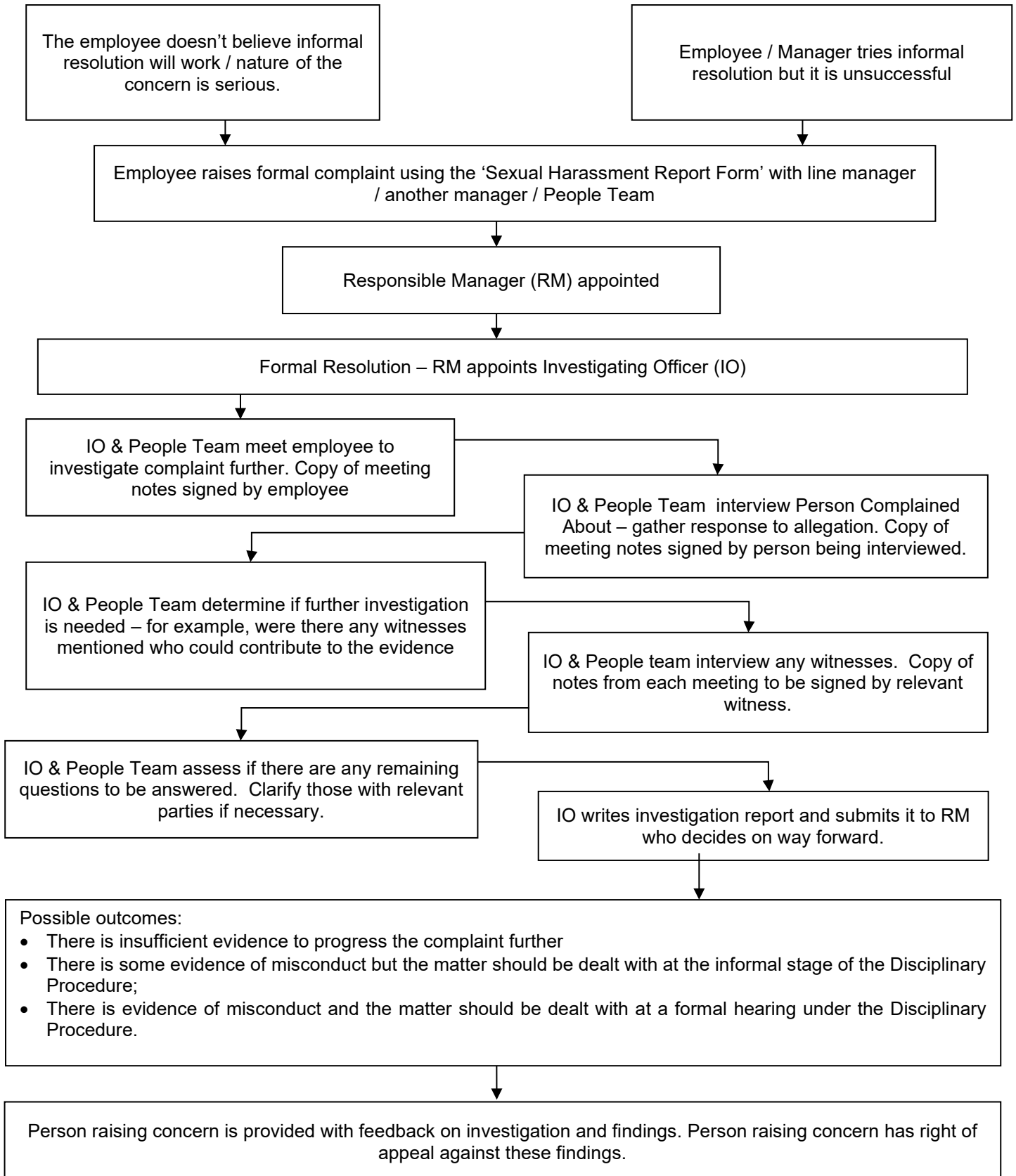
## **10. Additional Support**

Sexual harassment concerns are very distressing for all involved. Any employee affected by sexual harassment is reminded that they may use the Employee Assistance Programme (EAP) Helpline for advice and counselling.

Alongside the Council's EAP there is also an internal Employee Support Team. This team are equipped with the knowledge and skills to listen to any concerns, provide reassurance and guide employees towards appropriate help as needed.

Employees may also speak to the People Team for guidance on the policy and Unison members are advised to contact their union representative.

Process for Managing Sexual Harassment Concerns



**Sexual Harassment Report Form**

This form should be used to raise any breach of this policy and will form the starting point for any subsequent investigation. The information provided will be used for monitoring purposes.

Name	
Department	
Name of the person(s) complained of	
Their department (if known)	
Their position (if known)	
Please outline the actions or behaviours that you wish to complain about, providing specific examples and instances where possible, including dates and places (please continue on a separate sheet if you need to):	

Please describe how you felt at the time:

Were there any witnesses? If so, who?

Please outline any informal action that you have taken regarding this matter:

Have you reported this before to anyone? If so, please outline who you reported it to, when you reported it and what action followed:

Signed

Date