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ESKALE PARISH COUNCIL

ANTI-HARASSMENT AND BULLYING POLICY

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Introduction

All staff should be able to work in an environment free from harassment and bullying and be treated with dignity and respect regardless of gender, sexual orientation, transgender status, marital or family status, colour, race, nationality, ethnic or national origins, creed, culture, religion or belief, age, or disability.

This policy and procedure provide guidance on what to do if you are concerned about bullying or harassment and what to expect if you raise concerns. It applies to all staff (whether permanent, fixed term, or casual), contractors and agency staff.

Policy

The Council does not tolerate bullying or harassment in the workplace. This is the case for work-related events that take place within or outside of normal working hours; on council property or elsewhere; whether the conduct is a one-off act or repeated course of conduct, and whether done purposefully or not.

The Council does not tolerate retaliation against, or victimisation of, any person involved in bringing a complaint of harassment or bullying. Retaliation or victimisation will also constitute a disciplinary offence, which may in appropriate circumstances lead to dismissal. You should also be aware that if a court or tribunal finds that you have bullied or harassed someone, in some circumstances the treatment may amount to a crime punishable by a fine or imprisonment.

The council will take appropriate action if any of our staff are bullied or harassed by staff, councillors, members of the public or suppliers.

What type of treatment amounts to bullying or harassment?

Bullying is offensive, intimidating, threatening, malicious or insulting behaviour, and/or an abuse or misuse of power that undermines, humiliate or injure the person on the receiving end.

Harassment is unwanted conduct related to relevant ‘protected characteristics’, which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief and age. Harassment amounts to unlawful discrimination if it relates to a ‘protected characteristic’.

Examples of bullying and harassment include:

e Verbal abuse or offensive comments, jokes or pranks related to age, disability, gender re-assignment, marriage, civil partnership, pregnancy, maternity, race,
religion, belief, sex or sexual orientation
e |ewd or suggestive comments
e Deliberate exclusion from conversations or work activities
¢ Withholding information, a person needs in order to do their job
e Practical jokes, initiation ceremonies or inappropriate birthday rituals
¢ Physical abuse such as hitting, pushing orjostling
¢ Rifling through, hiding or damaging personal property

e Subjecting a person to humiliation or ridicule, belittling their efforts, often in front of others
¢ Abusing a position of power

It is important to recognise that conduct which one person may find acceptable, another may find totally unacceptable. All employees must, therefore, treat their colleagues with respect and appropriate sensitivity.

Bullying does not include appropriate criticism of an employee’s behaviour or proper performance management.

Reporting concerns

What vou should do if you withess an incident you believe to harassment or bullying

If you witness such behaviour you should report the incident in confidence to the Clerk or a councillor. Such reports will be taken seriously and will be treated in strict confidence as far as it is possible to do so.

What you should do if you feel you are being Bullied or Harassed by a member of the public or supplier (as opposed to a colleague)

If you are being bullied or harassed by someone with whom you come into contact at work, please raise this with the Clerk or a councillor in the first instance. They will then decide how best to deal with the situation, in consultation with you.

What you should do if you feel you are being Bullied or Harassed by a councillor

If you are being bullied or harassed by a councillor, please raise this with the Clerk or the Chair of the Council in the first instance. They will then decide how best to deal with the situation, in consultation with you. There are two possible avenues for you, informal or formal. The Informal Resolution is described below. Formal concerns regarding potential breaches of Code of Conduct breaches will be investigated by the Monitoring Officer.

What you should do if you are being Bullied or Harassed by another member of staff

If you are being bullied or harassed by a colleague or contractor, there are two possible avenues for you, informal or formal. These are described below.

Informal resolution

If you are being bullied or harassed you may be able to resolve the situation yourself by explaining clearly to the perpetrator(s) that their behaviour is unacceptable, contrary to our policy and must stop. Alternatively, you may wish to ask the Clerk, a colleague or another councillor to put this on your behalf or to be with you when confronting the perpetrator(s).

If the above approach does not work or if you do not want to try to resolve the situation in this way, or if you are being bullied by your own manager, you should raise the issue with the Chair of the Council. The Chair (or another appropriate individual) will discuss with you the option of trying to resolve the situation informally by:

e Telling the alleged perpetrator(s), without prejudging the matter, that there has been
a complaint that their behaviour is having an adverse effect on a member of staff;
e That such behaviour is contrary to our policy;
e That for employees, the continuation of such behaviour could amount to a serious disciplinary offence.

It may be possible to have the conversation with the alleged perpetrator without revealing your name, if this is what you want. They will also stress that the conversation is confidential.

In certain circumstances we may be able to involve a neutral third party to facilitate a resolution of the problem. The Chair will discuss this with you if it is appropriate.

If your complaint is resolved informally, the alleged perpetrator(s) will not usually be subject to disciplinary sanctions. However, in exceptional circumstances (such as a serious allegation of harassment or in cases where a problem has happened before) the council may decide to investigate further and take more formal action notwithstanding that you raised the matter informally. We will consult with you before taking this step.

Raising a formal complaint

If informal resolution is unsuccessful or inappropriate, you can make a formal complaint about the harassment or bullying to the Clerk or the Chair of the Council if the behaviour was not from a Councillor (if it was please raise it with the Monitoring Officer). A formal complaint may ultimately lead to disciplinary action against the perpetrator(s) where they are employed.

The Clerk or the Chair of the Council will appoint someone to investigate your complaint. You will need to co-operate with the investigation and provide the following details (if not already provided):

e The name of the alleged perpetrator(s),
e The nature of the harassment or bullying,
e The dates and times the harassment or bullying occurred
e The names of any withesses and
e Any action taken by you to resolve the matter informally

... against a colleague or contractor

The alleged perpetrator(s) would need to be told your name and the details of your complaint for the issue to be investigated properly. However, we will carry out the investigation as confidentially and sensitively as possible. Where you and the alleged perpetrator(s) work in proximity to each other, we will consider whether it is appropriate to separate you whilst the matter is being investigated.

... against a member of the public or supplier

We will investigate the complaint as far as possible by contacting the member of public or the supplier's employer and asking for a response to the allegations.

... against a councillor

Formal concerns regarding potential breaches of Code of Conduct breaches will be investigated by the Monitoring Officer.

During the investigation

Investigations will be carried out promptly, sensitively and, as far as possible, confidentially. If, after an investigation, we decide that an employee has harassed or bullied another employee, then the employee may be subject to disciplinary action, up to and including dismissal.

The Council will consider how to protect your health and wellbeing whilst the investigation is taking place and discuss this with you. Depending on the nature of the allegations, the Investigator may want to meet with you to better understand your compliant. Whilst there is no Statutory right to be accompanied at investigation meetings, the Investigator will consider your request if you want to have a work colleague or union representative with you at that meeting.

Hearing

After the investigation, a panel will meet with you in a Grievance Hearing (following the Grievance Procedure) to consider the complaint and the findings of the investigation. At the meeting you may be accompanied by a fellow worker or a trade union official.

After the meeting the panel will write to you to inform you of the decision and to notify you of your right to appeal if you are dissatisfied with the outcome. You should put your appeal in writing explaining the reasons why you are dissatisfied with the decision. Your appeal will be heard under the appeal process that is described in the Grievance Procedure.

Victimisation

Employees and others who make allegations of bullying or harassment in good faith will not be treated less favourably as a result.

False allegations

False accusations of harassment or bullying can have a serious effect on innocent individuals. Staff and others have a responsibility not to make false allegations. False allegations made in bad faith will be dealt with under our disciplinary procedure.

Disclosure and confidentiality

We will treat personal data collected during this process in accordance with the data protection policy. Information about how data is used and the basis for processing data is provided in the employee privacy notice.

Use of the disciplinary procedure

Harassment and bullying constitute serious misconduct. If, at any stage from the point at which a complaint is raised, we believe there is a case to answer and a disciplinary offence might have been committed, we will instigate our disciplinary procedure. Any employee found to have harassed or bullied a colleague will be liable to disciplinary action up to and including summary dismissal.

Notes

1. Protected characteristics

A ‘protected characteristic’ is defined in the Equality Act 2010 as age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is unlawful to discriminate against an individual because of any of the protected characteristics.

Discrimination includes treating people differently because of a protected characteristic. Harassment is unwanted conduct related to a ‘protected characteristic’. Employees can complain of harassment even if the behaviour in question is not directed at them. This is because the complainant does not actually need to possess the relevant protected characteristic. An employee can complain of unlawful harassment if they are related someone with a protected characteristic, or because a colleague believes they have a protected characteristic.

2. Legal risks

An employee does not need to be employed to make a discrimination claim at a tribunal.

e Job applicants who believe they have not been appointed because of a ‘protected characteristic’ can make a claim.
e New or established employees who are dismissed because of a health condition can make a discrimination claim at a tribunal.
e An employee in their probationary period may claim discrimination if their
employment has been ended for no credible reason.
e An employee subjected to harassment can make a discrimination claim at a tribunal.
e An employee asked to retire can make a discrimination claim at a tribunal.

Successful unfair dismissal claims are limited to a compensation cap, whereas those for unlawful discrimination have no cap.

A positive employment culture, and swift action if conduct falls beneath acceptable standards will help mitigate the risks. An unhealthy culture will make it difficult to defend claims.

The time to defend and the cost of defending tribunal claims can be significant, irrespective of the outcome.

3. Culture and behaviour

Modern day workforces are eclectic, and a positive culture throughout the council enables staff with different backgrounds and beliefs to share ideas and shape how the council achieves what councillors decide for the community.

Different people find different things acceptable. It may not be obvious that some behaviour would be unwelcome or could offend a person. Those in positions of ‘power’ over an employee may not always understand how words or actions are received. An employee may not always find it easy to communicate how they really feel. ‘Banter’ that on the face of

it is reciprocated may nonetheless be unwelcomed and damaging. Others who overhear comments, or learn of them third hand, will form judgements about the culture.

Whilst both staff and councillors jointly determine what the working culture is like, councillors are key in demonstrating what is and isn’'t acceptable behaviour. This is apparent from how councillors behave with each other in council meetings and also in how standards of behaviour are applied through the use of informal discussion and formal policies. Examples of unacceptable behaviour at work include (but are not limited to):

e physical conduct ranging from touching to sexual advances and serious assault;
o the offer of rewards for going along with sexual advances, e.g. promotion, access to training;
e suggestions that refusing sexual advances will adversely affect aspects relating to employment (such as pay, promotion, training, work opportunities, or any other condition of employment or development;
e comments about a person's appearance;
e jokes or comments of a sexual or racial nature or about an individual's age, disability, sexual orientation or religion;
e questions about a person's sex life;
e unwanted nicknames, especially related to a person's age, race or disability;
e the use of obscene gestures;
e excluding an individual for a non-work reason
e treating an employee differently because they have, or are perceived to have, a ‘protected characteristic’ or are associated with someone who does;
o the open display of pictures or objects with sexual or racial overtones, even if not directed at any particular person;
e spreading malicious rumours or insulting someone;
e picking on someone or setting them up to fail;
e making threats or comments about someone's job security without good reason;
¢ ridiculing someone;
e isolation or non-cooperation at work; and
e excluding someone from social activities.
During the investigation

Employers have duty of care to provide a safe place of work. If a complaint is made, discuss how to manage working relationships whilst the allegation is being investigated and until the outcome is disclosed. This is as much for the protection of the alleged perpetrator as for the aggrieved.

Consider whether a neutral person should be offered as a ‘listening ear for both parties in the investigation. Offer other support that may be appropriate to the situation such as signposting to support groups, time off for counselling etc. If you have suspended a staff member, your duty of care continues and it's important to consider their wellbeing and mental health.

Ensure that you regularly communicate with both parties.

5. Victimisation

All employees have the right to raise genuine concerns without the fear of reprisals. If the aggrieved (or a witness) is treated differently / less favourably because they have raised a complaint, then this is victimisation. This would include isolating someone because they have made a complaint, cancelled a planned training event, or giving them a heavier or more difficult workload. Victimisation can lead to a claim to an employment tribunal.

6. False allegations

If an employee makes an allegation that they know to be untrue, or gives evidence that they know to be untrue, the council should consider the matter under the disciplinary procedure. Such an allegation would be potentially Gross Misconduct.

7. Complaints against councillors

Following the Ledbury case, the law is clear that any formal complaint regarding a beach of the Code of Conduct must be referred to the Monitoring Officer for investigation. During the investigation, it is critical to ensure that where an employee of the council has made the complaint, that the council agrees with the employee reasonable measures to protect their health and safety. Such measures may include a temporary change in duties, change of work location, not attending meetings with the person to whom the complaint has been made etc.

Guidance

Where there is text in [square brackets] this part may be updated or be deleted if not relevant. An alternative option may have been provided.

Important notice

This is an example of an employment policy designed for a small council adhering to statutory minimum requirements and does not constitute legal advice. As with all policies it should be consistent with your terms and conditions of employment.

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This document has been written by the HR Services Partnership — a company that provides HR advice and guidance to town and parish councils. Please contact them on 01403 240 205 for information about their services.