

COPYTHORNE PARISH COUNCIL MEETING – TUESDAY JULY 14TH 2020

Item 12 – To receive and approve three new Council policies relating to Staffing Matters:-

- a. Disciplinary Policy; b. Grievance Policy; c. Anti-Bullying Policy**

BACKGROUND/CURRENT POSITION

The Council last reviewed its Disciplinary and Grievance Policies just under two years ago.

The existing policies are no longer in step with templates provided by the National Association of Local Councils ("NALC") which are based on guidance provided by ACAS (the Advisory, Conciliation and Arbitration Service). Nor do they take into account "The Ledbury Decision" (R (Harvey) v Ledbury Town Council) which changed the way in which councils must deal with an employee's grievance if the complaint is about the conduct of a councillor.

The Council does not have an Anti-Bullying/Harassment policy and NALC have stated that it is important to maintain a commitment to having a workplace that is free from harassment and/or bullying, and where individuals are treated with dignity and respect.

PROPOSAL

Attached are three proposed policy documents (as detailed in the title of this agenda item) which follow the NALC templates. They were reviewed by the Council's Personnel & Governance Advisory Committee (in line with Governance Responsibility 4 within their Terms of Reference) at its meeting on July 2nd 2020 and its members unanimously support their adoption by the Council. The policies set out in clear language how councils should deal with all three topics. The policies will be reviewed on an annual basis to check that they still comply with legal requirements and best practice as provided by NALC

RECOMMENDATIONS

1. That Council adopts the proposed Disciplinary; Grievance; & Anti-Bullying Policies and incorporates them into the Council's Staff Handbook
2. The policies be reviewed on an annual basis by the Personnel & Governance Advisory Committee (in line with Governance Responsibility 4 within their Terms of Reference)

David Rigby
Parish Clerk
July 2nd 2020

COPYTHORNE PARISH COUNCIL - DISCIPLINARY POLICY

NOTES: Changes from the NALC Template:-

Personal & Governance Advisory Committee has replaced Staffing Committee

Disciplinary Panel has replaced sub-committee (of the Staffing Committee)

Introduction

- 1 This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>). It also takes account of the ACAS guide on discipline and grievances at work.

https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf

The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.

- 2 The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 3 This policy confirms:
 - informal coaching and supervision will be considered, where appropriate, to improve conduct and / or attendance
 - the Council will fully investigate the facts of each case
 - the Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used when performance management proves ineffective. For more information see ACAS "Performance Management" at <https://www.acas.org.uk/index.aspx?articleid=6608>
 - employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case
 - employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing
 - employees may be accompanied or represented by a companion – a workplace colleague, a trade union representative or a trade union official - at any investigatory, disciplinary or appeal meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case
 - the Council will give employees reasonable notice of any meetings in this procedure. Employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions
 - if the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within

five working days of the original meeting date unless it is unreasonable not to propose a later date

- any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council
- information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee's disciplinary records will be held by the Council in accordance with the General Data Protection Regulation (GDPR)
- audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition
- employees have the right to appeal against any disciplinary decision. The appeal decision is final
- if an employee who is already subject to the Council's disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure
- disciplinary action taken by the Council can include a written warning, final written warning or dismissal
- this procedure may be implemented at any stage if the employee's alleged misconduct warrants this
- except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct
- if an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it,
- the Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the consent of affected parties

Examples of misconduct

- 4 Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct: The list is not exhaustive.
- unauthorised absence
 - poor timekeeping
 - misuse of the Council's resources and facilities including telephone, email and internet
 - inappropriate behaviour
 - refusal to follow reasonable instructions
 - breach of health and safety rules.

Examples of gross misconduct

- 5 Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct: The list is not exhaustive
- bullying, discrimination and harassment
 - incapacity at work because of alcohol or drugs
 - violent behaviour
 - fraud or theft
 - gross negligence
 - gross insubordination
 - serious breaches of council policies and procedures e.g. the Health and Safety Policy, Equality and Diversity Policy, Data Protection Policy and any policies regarding the use of information technology
 - serious and deliberate damage to property
 - use of the internet or email to access pornographic, obscene or offensive material
 - disclosure of confidential information.

Suspension

- 6 If allegations of gross misconduct or serious misconduct are made, the council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.
- 7 While on suspension, the employee is required to be available during normal hours of work in the event that the council needs to make contact. The employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or councillor.
- 8 The employee must not attend work. The council will make arrangements for the employee to access any information or documents required to respond to any allegations.

Examples of unsatisfactory work performance

- 9 The following list contains some examples of unsatisfactory work performance: The list is not exhaustive.
- inadequate application of management instructions/office procedures
 - inadequate IT skills
 - unsatisfactory management of staff
 - unsatisfactory communication skills.

The Procedure

- 10 Preliminary enquiries. The council may make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.

If the employee's manager believes there may be a disciplinary case to answer, the council may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.

- 11 Informal Procedures. Where minor concerns about conduct become apparent, it is the manager's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the manager. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

Disciplinary investigation

- 12 A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.
- 13 If a formal disciplinary investigation is required, the Personnel & Governance Advisory Committee will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a councillor. If the Personnel & Governance Advisory Committee considers that there are no councillors who are independent (for example, because they all have direct involvement in the allegations about the employee), it will appoint someone from outside the Council. The Investigator will be appointed as soon as possible after the allegations have been made. The Personnel & Governance Advisory Committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:
- the allegations or events that the investigation is required to examine
 - whether a recommendation is required
 - how the findings should be presented. For example, an investigator will often be required to present the findings in the form of a written report
 - who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.
- 14 The Investigator will be asked to submit their findings within 20 working days of appointment where possible. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary and the Council may decide to commence disciplinary proceedings at the next stage - the disciplinary meeting (see paragraph 22).
- 15 The Personnel & Governance Advisory Committee will notify the employee in writing of the alleged misconduct and details of the person undertaking the investigation. The employee may be asked to meet an investigator as part of the disciplinary investigation. The employee will be given sufficient notice of the meeting with the Investigator so that he/she has reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the Council's disciplinary procedure. The Council will also inform the employee that when he/she meets with the Investigator, he/she will have the opportunity to comment on the allegations of misconduct.
- 16 Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.

- 17 If there are other persons (e.g. employees, councillors, members of the public or the Council's contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with the employee.
- 18 The Investigator has no authority to take disciplinary action. His/her role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Personnel & Governance Advisory Committee whether or not disciplinary action should be considered under the policy.
- 19 The Investigator's report will contain his/her recommendations and the findings on which they were based. He/she will recommend either:
 - the employee has no case to answer and there should be no further action under the Council's disciplinary procedure
 - the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally or
 - the employee has a case to answer and a formal hearing should be convened under the Council's disciplinary procedure.
- 20 The Investigator will submit the report to the Personnel & Governance Advisory Committee which will recommend to Council whether further action should be taken.
- 21 If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

The disciplinary meeting

- 22 If the Council decides that there is a case to answer, it will ask the Personnel & Governance Advisory Committee to appoint a Disciplinary Panel of three councillors, to formally hear the allegations. The Disciplinary Panel will appoint a Chairman from one of its members. The Investigator shall not sit on the Disciplinary Panel.
- 23 No councillor with direct involvement in the matter shall be appointed to the Disciplinary Panel. The employee will be invited, in writing, to attend a disciplinary meeting. The Disciplinary Panel's letter will confirm the following:
 - the names of its Chairman and other two members
 - details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting
 - a copy of the information provided to the Disciplinary Panel which may include the investigation report, supporting evidence and a copy of the Council's disciplinary procedure
 - the time and place for the meeting. The employee will be given reasonable notice of the hearing so that he /she has sufficient time to prepare for it
 - that witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of their witnesses' names at least two working days before the meeting
 - that the employee may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official

The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:

- the Chairman will introduce the members of the Disciplinary Panel to the employee and explain the arrangements for the hearing
 - the Chairman will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation)
 - the Chairman will invite the employee to present their account
 - the employee (or the companion) will set out his/her case and present evidence (including any witnesses and/or witness statements)
 - any member of the Disciplinary Panel and the employee (or the companion) may question the Investigator and any witness
 - the employee (or companion) will have the opportunity to sum up
- 24 The Chairman will provide the employee with the Disciplinary Panel's decision with reasons, in writing, within five working days of the meeting. The Chairman will also notify the employee of the right to appeal the decision.
- 25 The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further investigated by the Disciplinary Panel.

Disciplinary action

- 26 If the Disciplinary Panel decides that there should be disciplinary action, it may be any of the following:

First written warning

If the employee's conduct has fallen beneath acceptable standards, a first written warning will be issued. A first written warning will set out:

- the reason for the written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action
- the employee's right of appeal
- that a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Final written warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. A final written warning will set out:

- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
- the employee's right of appeal
- that a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Dismissal

The Council may dismiss:

- for gross misconduct
- if there is no improvement within the specified time period, in the conduct which has been the subject of a final written warning
- if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.

- 27 The Council will consider very carefully a decision to dismiss. If an employee is dismissed, he/she will receive a written statement of the reasons for his/her dismissal, the date on which the employment will end and details of his/her right of appeal. If the Disciplinary Panel decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

The appeal

- 28 An employee who is the subject of disciplinary action will be notified of the right of appeal. His/her written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.
- 29 The grounds for appeal include;
- a failure by the Council to follow its disciplinary policy
 - the Disciplinary Panel's disciplinary decision was not supported by the evidence
 - the disciplinary action was too severe in the circumstances of the case
 - new evidence has come to light since the disciplinary meeting.
- 30 Where possible, the appeal will be heard by a panel of three members of the Council who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the Council who have not previously been involved. If so, the appeal panel will be a committee of three members of the Council who may include members of the Personnel & Governance Advisory Committee. The appeal panel will appoint a Chairman from one of its members.
- 31 The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that he/she may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.
- 32 At the appeal meeting, the Chairman will:
- introduce the panel members to the employee
 - explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the disciplinary decision
 - explain the action that the appeal panel may take.
- 33 The employee (or companion) will be asked to explain the grounds for appeal.

- 34 The Chairman will inform the employee that he/she will receive the decision and the panel's reasons, in writing, usually within five working days of the appeal hearing.
- 35 The appeal panel may decide to uphold the disciplinary decision of the Personnel & Governance Advisory Committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.
- 36 If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.
- 37 The appeal panel's decision is final.

DRAFT

COPYTHORNE PARISH COUNCIL - GRIEVANCE POLICY

NOTES: Changes from the NALC Template:-

Personal & Governance Advisory Committee has replaced Staffing Committee

Grievance Panel has replaced sub-committee (of the Staffing Committee)

Introduction

1. This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>). It also takes account of the ACAS guide on discipline and grievances at work. (https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf). It aims to encourage and maintain good relationships between the Council and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
2. Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally with their line manager.
3. This policy confirms:
 - employees have the right to be accompanied or represented at a grievance meeting or appeal by a companion who can be a workplace colleague, a trade union representative or a trade union official. This includes any meeting held with them to hear about, gather facts about, discuss, consider or resolve their grievance. The companion will be permitted to address the grievance/appeal meetings, to present the employee's case for his/her grievance/appeal and to confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case.
 - the Council will give employees reasonable notice of the date of the grievance/appeal meetings. Employees and their companions must make all reasonable efforts to attend. If the companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date unless it is unreasonable not to propose a later date
 - any changes to specified time limits must be agreed by the employee and the Council
 - an employee has the right to appeal against the decision about his/her grievance. The appeal decision is final
 - information about an employee's grievance will be restricted to those involved in the grievance process. A record of the reason for the grievance, its outcome and action taken is confidential to the employee. The employee's grievance records will be held by the Council in accordance with the General Data Protection Regulation (GDPR)
 - audio or video recordings of the proceedings at any stage of the grievance procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition
 - if an employee who is already subject to a disciplinary process raises a grievance, the grievance will normally be heard after completion of the disciplinary procedure

- if a grievance is not upheld, no disciplinary action will be taken against an employee if he/she raised the grievance in good faith
- the Council may consider mediation at any stage of the grievance procedure where appropriate, (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process which requires the consent of affected parties
- Employees can use all stages of the grievance procedure If the complaint is not a code of conduct complaint about a councillor. Employees can use the informal stage of the council's grievance procedure (paragraph 4) to deal with all grievance issues, including a complaint about a councillor Employees cannot use the formal stages of the council's grievance procedure for a code of conduct complaint about a councillor. If the complaint about the councillor is not resolved at the informal stage, the employee can contact the monitoring officer of New Forest District Council who will inform the employee whether or not the complaint can be dealt with under the code of conduct. If it does not concern the code of conduct, the employee can make a formal complaint under the council's grievance procedure (see paragraph 5)
- If the grievance is a code of conduct complaint against a councillor, the employee cannot proceed with it beyond the informal stage of the council's grievance procedure. However, whatever the complaint, the council has a duty of care to its employees. It must take all reasonable steps to ensure employees have a safe working environment, for example by undertaking risk assessments, by ensuring staff and councillors are properly trained and by protecting staff from bullying, harassment and all forms of discrimination
- If an employee considers that the grievance concerns his or her safety within the working environment, whether or not it also concerns a complaint against a councillor, the employee should raise these safety concerns with his or her line manager at the informal stage of the grievance procedure. The council will consider whether it should take further action in this matter in accordance with any of its employment policies (for example its health and safety policy or its dignity at work policy) and in accordance with the code of conduct regime

Informal grievance procedure

4. The Council and its employees benefit if grievances are resolved informally and as quickly as possible. As soon as a problem arises, the employee should raise it with his/her manager to see if an informal solution is possible. Both should try to resolve the matter at this stage. If the employee does not want to discuss the grievance with his/her manager (for example, because it concerns the manager), the employee should contact the Chairman of the Personnel & Governance Advisory Committee or, if appropriate, another member of the Personnel & Governance Advisory Committee. If the employee's complaint is about a councillor, it may be appropriate to involve that councillor at the informal stage. This will require both the employees and the councillors consent.

Formal grievance procedure

5. If it is not possible to resolve the grievance informally and the employee's complaint is not one that should be dealt with as a code of conduct complaint (see above), the employee may submit a formal grievance. It should be submitted in writing to the Chairman of the Personnel & Governance Advisory Committee.

6. The Personnel & Governance Advisory Committee will appoint a Grievance Panel of three members to hear the grievance. The Grievance Panel will appoint a Chairman from one of its members. No councillor with direct involvement in the matter shall be appointed to the Grievance Panel.

Investigation

7. If the Grievance Panel decides that it is appropriate, (e.g. if the grievance is complex), it may appoint an investigator to carry out an investigation before the grievance meeting to establish the facts of the case. The investigation may include interviews (e.g. the employee submitting the grievance, other employees, councillors or members of the public).
8. The investigator will summarise their findings (usually within an investigation report) and present their findings to the Grievance Panel.

Notification

9. Within 10 working days of the Council receiving the employee's grievance (this may be longer if there is an investigation), the employee will normally be asked, in writing, to attend a grievance meeting. The written notification will include the following:
 - the names of its Chairman and other members
 - the date, time and place for the meeting. The employee will be given reasonable notice of the meeting which will normally be within 25 working days of when the Council received the grievance
 - the employee's right to be accompanied by a workplace colleague, a trade union representative or a trade union official
 - a copy of the Council's Grievance Policy
 - confirmation that, if necessary, witnesses may attend (or submit witness statements) on the employee's behalf and that the employee should provide the names of his/her witnesses as soon as possible before the meeting
 - confirmation that the employee will provide the Council with any supporting evidence in advance of the meeting, usually with at least two days' notice
 - findings of the investigation if there has been an investigation
 - an invitation for the employee to request any adjustments to be made for the hearing (for example where a person has a health condition).

The grievance meeting

10. At the grievance meeting:
 - the Chairman will introduce the members of the Grievance Panel to the employee
 - the employee (or companion) will set out the grievance and present the evidence
 - the Chairman will ask the employee questions about the information presented and will want to understand what action does he/she wants the Council to take
 - any member of the Grievance Panel and the employee (or the companion) may question any witness
 - the employee (or companion) will have the opportunity to sum up the case

- a grievance meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the Grievance Panel.
11. The Chairman will provide the employee with the Grievance Panel's decision, in writing, usually within five working days of the meeting. The letter will notify the employee of the action, if any, that the Council will take and of the employee's right to appeal.

The appeal

12. If an employee decides that his/her grievance has not been satisfactorily resolved by the Grievance Panel, he/she may submit a written appeal to the Personnel & Governance Advisory Committee. An appeal must be received by the Council within five working days of the employee receiving the Grievance Panel's decision and must specify the grounds of appeal.
13. Appeals may be raised on a number of grounds, e.g.:
 - a failure by the Council to follow its grievance policy
 - the decision was not supported by the evidence
 - the action proposed by the Grievance Panel was inadequate/inappropriate
 - new evidence has come to light since the grievance meeting.
14. The appeal will be heard by a panel of three members of the Personnel & Governance Advisory Committee who have not previously been involved in the case. There may be insufficient members of the Personnel & Governance Advisory Committee who have not previously been involved. If so, the appeal panel will be a committee of three Council members who may include members of the Personnel & Governance Advisory Committee. The appeal panel will appoint a Chairman from one of its members.
15. The employee will be notified, in writing, usually within 10 working days of receipt of the appeal of the time, date and place of the appeal meeting. The meeting will normally take place within 25 working days of the Council's receipt of the appeal. The employee will be advised that he/she may be accompanied by a workplace colleague, a trade union representative or a trade union official.
16. At the appeal meeting, the Chairman will:
 - introduce the panel members to the employee
 - explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the Grievance Panel
 - explain the action that the appeal panel may take.
17. The employee (or companion) will be asked to explain the grounds of appeal.
18. The Chairman will inform the employee that he/she will receive the decision and the panel's reasons, in writing, within five working days of the appeal meeting.
19. The appeal panel may decide to uphold the decision of the Grievance Panel or substitute its own decision.
20. The decision of the appeal panel is final.

COPYTHORNE PARISH COUNCIL ANTI-HARASSMENT AND BULLYING POLICY

(NOTE:- This policy is unchanged from the NALC TEMPLATE)

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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, humiliates or injures 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:

- Verbal abuse or offensive comments, jokes or pranks related to age, disability, gender reassignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief, sex or sexual orientation
- Lewd or suggestive comments
- Deliberate exclusion from conversations or work activities
- Withholding information, a person needs in order to do their job
- Practical jokes, initiation ceremonies or inappropriate birthday rituals
- Physical abuse such as hitting, pushing or jostling
- Rifling through, hiding or damaging personal property
- 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 you should do if you witness an incident you believe to be 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:

- 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;
- That such behaviour is contrary to our policy;
- 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. 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):

- The name of the alleged perpetrator(s),
- The nature of the harassment or bullying,
- The dates and times the harassment or bullying occurred
- The names of any witnesses and
- 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 complaint. 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.

This is a non-contractual procedure which will be reviewed from time to time.

Adopted by Council: xx/xx/xxxx

Reviewed by Council: xx/xx/xxxx

— policy ends here —

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.

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

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

DRAFT