



## Newick Parish Council

### **BULLYING and HARASSMENT at WORK POLICY**

#### **Introduction**

Bullying and harassment of any kind is not tolerated in any Newick Parish Council related workplace. Several Acts of Parliament specifically deal with discriminatory conduct, but in the generality there is no law yet that identifies bullying and imposes penalties. Harassment can be dealt with under both the civil and criminal law through the provisions of the Protection From Harassment Act 1997. However, it is known from reports that many Clerks to Local Councils suffer from being bullied and this should not occur and should be prevented and stopped under the 'Duty of Care' that is inherent in all contracts of employment.

#### **Defining harassment**

Harassment is generally defined as conduct or behaviour that is unwelcome, unwarranted and is detrimental to the well-being and self-esteem of the person affected.

#### **Defining bullying**

Bullying is primarily intimidating, but may also be insulting, offensive or malicious. It is frequently recognised through the abuse or misuse of power through means intended to undermine, humiliate, denigrate or create a detriment for the employee.

It can be related to the Equality Act 2010 which outlines the protected nine characteristics or some personal characteristic of the individual. It may be persistent or an isolated incident. The crucial point is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

Many bullies attempt to disguise their conduct when challenged on the grounds that it is the way people behave in the 'real' world and that the person affronted should 'toughen up'; or that it was not meant and only a bit of 'horse play'. Some cases of bullying and harassment are obvious but it is sometimes the 'grey' areas that cause most problems. Examples of what is unacceptable behaviour include:

- spreading malicious rumours, or insulting someone (particularly on the grounds of race, sex, sexual orientation, religion or belief)
- copying memos or other correspondences that are critical about someone to others who do not need to know
- ridiculing or demeaning someone — picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances — touching, standing too close, display of offensive materials, using innuendos or other inappropriate language
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and making constant criticism

- preventing individuals progressing by intentionally blocking promotion or training opportunities.

Bullying and harassment are not necessarily face to face, they may be by written communications, email, telephone, and automatic supervision methods — such as computer recording of downtime from work, or recording of telephone conversations.

Bullying and harassment may not be obvious to others, and may be insidious. The employee may be anxious that others will consider them weak, or not up to the job, if they find the actions of others intimidating. They may be accused of 'overreacting', and worry that they won't be believed if they do report incidents.

People being bullied or harassed may sometimes appear to overreact to something that seems relatively trivial but which may be the 'last straw' following a series of incidents. There is often fear of retribution if they do make a complaint. Clerks generally work alone, often from their own homes. There may not be any colleagues to act as shields for the unacceptable behaviour or where there are they may be reluctant to come forward as witnesses, as they too may fear the consequences for themselves. Other reasons for a lack of support may be that the Councillors may be unaware of the conduct of one or two of their number as they are seldom in the presence of the Clerk other than at formal meetings. The isolated position of the Clerk both in spatial terms and in employment relation terms provides ample opportunity for the bully. Naturally the Clerk or other employee in this case is facing a situation where he or she is outnumbered. An additional difficulty may also lie in any internal partnership arrangements amongst Councillors that cause them to close ranks on partisan grounds if a complaint against one of their number is brought formally. It also has to be said that some employees through lack of knowledge or confidence or character traits find it difficult or impossible to stand up to a bully and become a punch bag for continuing unwanted attention.

#### **Employer's action on bullying and harassment**

Bullying is not only unacceptable on moral grounds and harassment on legal grounds but, if unchecked or badly handled, creates a serious problem for the council including:

- poor morale and poor employee relations
- loss of respect for managers and supervisors
- poor performance
- lost productivity
- absence
- long-term, certificated sick leave
- resignations
- damage to organisational reputation
- Tribunal and other court cases and payment of unlimited compensation.

It is in the Council's interests to promote a safe, healthy and fair environment in which people can work, that is free from bullying and harassment

#### **The legal position**

There is no specific legal definition of bullying in UK law except in relation to the various Discrimination Acts. The Protection from Harassment Act 1997 is a special case. Employers have a duty of care for all their workers and liability at common law arising out of the Employment Rights Act 1996 and in certain sections of the Health and Safety at Work Act 1974 (employers are responsible for the health, safety and welfare at work of all employees, and are liable for the actions of their employees at work).

The Health and Safety Executive has produced Guidance on Stress in the Workplace, which includes the advice that employers have “a legal duty to take reasonable care to ensure health is not placed at risk through excessive and sustained levels of stress arising from the way work is organised, the way people deal with each other at their work, or from the day-to-day demands place on their workforce. Stress should be treated like any other health hazard.”

### ***Sex Discrimination Act 1975***

### ***Race Relations Act 1976***

### ***Disability Discrimination Act 1995***

Under these Acts bullying and harassment may be considered to be discrimination.

There is also protection against discrimination on the grounds of religion or belief and sexual orientation, sex, disability, marriage and civil partnership, pregnancy and maternity and race through the Equality Act (2010) “protected characteristics”.

Employment Rights Act 1996 incorporates an employee’s right to claim ‘unfair constructive dismissal,’ when an employee resigns in the face of the employer’s breach of contract, which may include failure to protect their health and safety at work.

Criminal Justice and Public Order Act 1994 (this created a criminal offence of ‘intentional harassment’, whether in the workplace or elsewhere)

Protection from Harassment Act 1997 (this also created a criminal offence of harassment, and a right to damages for the victim).

### **Action by Employers**

This policy is necessary to protect both the employee and the employer. The policy provides:

- statement of commitment by the Council affirming the right to respect and dignity of all
- clear statement that bullying and harassment will not be tolerated by anyone in the council – zero tolerance
- examples of unacceptable behaviour
- statement that bullying and harassment may be treated as disciplinary offences
- the steps the Council will take to prevent bullying and harassment
- the responsibilities of the Councillors, the Council and employees
- the safeguarding of confidentiality for any complainant – wherever practicable
- reference to grievance and disciplinary policy and procedures (Employment Act 2002)
- a commitment to provide any necessary training for Councillors and staff
- a commitment to protection from victimisation

This policy applies to both staff and Councillors. Furthermore bullying or harassment of staff by visitors to the council will not be tolerated, neither will it be by constituents or parishioners.

The behaviour of councillors is as important as any formal policy. Forceful personalities can unfortunately sometimes tip over into bullying behaviour. A culture where employees are consulted and problems discussed is less likely to encourage bullying and harassment than one

where there is an authoritarian approach to the employees. The Council is clear that bullying and harassment are unacceptable.

The procedure for dealing with a complaint by a member of staff will be dealt with as swiftly as investigation and reasonableness permits.

This policy provides a statement to all about the standards of behaviour expected for all individuals so they are fully aware of their responsibilities to others and what constitutes bullying and harassment.

Employees must be assured that complaints of bullying and/or harassment, or information from staff relating to such complaints, will be dealt with fairly and confidentially and sensitively. Employees will be reluctant to come forward if they feel they may be treated unsympathetically or are likely to be confronted aggressively by the person whose behaviour they are complaining about.

### **Investigating complaints – formal approach**

The Parish Council will implement its grievance procedure immediately and appoint an impartial investigator and take the complaint seriously. Employees do not normally make serious accusations unless they feel seriously aggrieved. The Parish Council needs to have been seen to have acted properly and fairly at all stages and with transparency and openness.

If employees complain they are being bullied or harassed, then they have a grievance which must be dealt with regardless of whether or not their complaint accords with a standard definition

### **Informal approaches**

Some people are not aware that their behaviour is unacceptable and an informal discussion can lead to greater understanding and an agreement that the behaviour will cease. It may be that the individual will choose to do this themselves, or they may need support from an external source in the case of a councillor; an employee representative, or a counsellor.

### **Counselling**

Counselling may be considered useful where investigation shows no cause for disciplinary action, or where doubt is cast on the validity of the complaint. Counselling may resolve the issue or help support the person accused as well as the complainant.

### **Disciplinary procedures**

Where an informal resolution is not possible it becomes a disciplinary issue which needs to be dealt with under the Parish Council's disciplinary procedure. The procedure laid down under the Dispute Resolution section of the Employment Act 2002 must be followed exactly.

In cases which appear to involve serious misconduct, and there is reason to separate the parties, a short period of suspension of the alleged bully/harasser where the problem source is an employee may need to be considered while the case is being investigated. This should be with pay unless the contract of employment provides for suspension without pay in such circumstances. A suspension without pay, or any long suspension with pay, should be exceptional as these in themselves may amount to disciplinary penalties. If the source is a councillor then it will be considered whether to permit the employee special paid leave to allow them to be distanced from the source of the alleged problem. If they do not wish to go on leave then the Parish Council will ensure that the person is safeguarded and arrangements will be put in place; generally to ensure that the complainant is not left alone at any time so that the course of unacceptable conduct cannot continue behind closed doors. The Parish Council may consider means of fast contact to some reliable person who has speedy access to the employee's place of work, if necessary.

Unfounded allegation of bullying and/or harassment for malicious reasons will also be investigated and dealt with fairly and objectively under the disciplinary procedure.

## **Outcome of the disciplinary investigation**

The action to be taken will be reasonable in the light of the facts. In some cases it may be concluded that a penalty is unnecessary or that counselling or training is preferable — the individual may now be more able to accept the need to change their behaviour. Where a penalty is to be imposed, all the circumstances should be considered including: the employee's disciplinary and general record; whether the procedure points to the likely penalty; action taken in previous cases; any explanations and circumstances to be considered and whether the penalty is reasonable.

Oral or written warnings or suspension of the bully or harasser may be imposed on an employee if a case is proven. If the person against whom a case is proven is a Councillor then the council has sanctions within its power:

- admonishment and an undertaking not to repeat the conduct
- banning from all committees of the council and representation on all outside bodies
- a formal complaint by the council to the Standards Board; which is also the prerogative of the aggrieved employee

Where bullying or harassment amounts to gross misconduct, dismissal without notice may be appropriate for an employee.

Whenever a case of bullying or harassment arises, employers will take the opportunity to examine policies, procedures and working methods to see if they can be improved. The Human Resources Advisor from SLCC will be consulted by the Parish Council to ensure that it is receiving the correct and relevant information.

Reviewed and adopted 27<sup>th</sup> October 2015

Signed: .....(Chairman)