

Kempsey Parish Council

**Bullying, Harassment &
Whistleblowing Protocol**

Document revisions

Revision	Description	Adopted
1.0.0	Bullying Harassment & Whistleblowing approved and adopted	10/06/2013

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1. Bullying & Harassment

1.1

The relationship between Councillors and Officers is an essential ingredient that should contribute to the successful working of the organisation. This relationship within the authority should be characterised by mutual respect, informality and trust. Councillors and Officers must feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. Objective criticism is usually acceptable but can be unacceptable if the criticism becomes personal. This protocol gives guidance on what to do on the rare occasions when things go wrong.

1.2

Everyone should be treated with dignity and respect at work. Bullying and harassment of any kind are in no-one's interest and should not be tolerated in the workplace.

2. What is bullying and harassment?

2.1

Examples and definitions of what may be considered bullying and harassment are provided below for guidance. For practical purposes, those making a complaint usually define what they mean by bullying or harassment – something has happened to them that is unwelcome, unwarranted and causes a detrimental effect. 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.

3. How can bullying and harassment be recognised?

3.1

There are many definitions of bullying and harassment. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means to undermine, humiliate, denigrate or injure the recipient.

3.2

Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

3.3

Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the “grey” areas that cause most problems.

Examples of what is unacceptable behaviour include:

- “inappropriate behaviour”
- intimidation/humiliation
- excessive criticism
- autocratic/dictatorial behaviour
- shouting
- browbeating
- haranguing
- swearing
- ridiculing
- expressions of intolerance
- general discourtesy

3.4

Bullying and harassment are not necessarily face to face; they may be by written communications, e-mail (so called “flame mail”) and telephone.

4. Why does the Council need to take action on bullying and harassment?

4.1

There is an implied term of mutual trust and confidence in every contract of employment. Where the parish council is aware of a situation of bullying or harassment of an employee by one of its Councillors, but fails to act to stop it, it will be in breach of that implied term of employment contract and may be held liable for the constructive dismissal of that employee.

4.2

It is in every employer’s interest to promote a safe, healthy and fair environment in which people can work.

4.3

A parish council’s duty of care to an employee relates to all forms of personal injury, which will include mental as well as physical health. If a risk to health was foreseeable but no action was taken then the parish council could be at fault and compensation could be sought.

5. The Members' Code of Conduct

5.1

Bullying is expressly forbidden under paragraph 3(2)(b) of the Model Code of Conduct. There are, in addition, complementary obligations to;

- not do anything which may cause the authority to breach any equality laws;
- treat others with respect;
- not intimidate any person who is or is likely to be a complainant, a witness or involved in an investigation relating to a breach of the Code; and;
- Not compromise or attempt to compromise the impartiality of those who work for, or on behalf of, the authority.

5.2

A proven allegation of bullying or harassment will always be a breach of the Code of Conduct and the Councillor involved is liable to be reported to the Local Standards Committee. Councillors are entitled to challenge Officers as to why they hold their views. However, if criticism amounts to a personal attack or is of an offensive nature, the Councillor is likely to have crossed the line of what is acceptable behaviour.

5.3

If there are instances of bullying or harassment by Councillors towards officers or other Councillors, then those Councillors who are aware of the incident should consider reporting it to the Standards Committee of the relevant principal authority. It is also open to Officers who are either the subject of bullying or harassment or who witness such an incident to similarly report it to the Standards Committee (which is likely to have established an Assessment Sub-Committee to decide whether to investigate such complaints).

5.4

If Members or Officers are unsure what to do or how to report the matter, they should seek the advice of the Monitoring Officer.

6. Grievance and disciplinary procedures

6.1

Obviously it is best to try to avoid things getting to a state where an employee considers themselves dismissed or issues a personal injury claim against the Council. This can be done through having an accessible and useable grievance procedure.

6.2

Since October 2004 all employers have been required by law to have disciplinary and grievance procedures. These cover disciplinary rules and procedures for handling discipline, grievance and appeals. Details must be included in the employee's written statement of employment particulars or reference made to a separate document which is readily accessible to the employee.

A grievance procedure enables individual employees to raise concerns, problems or complaints with management about their employment. It should allow for both an informal and formal approach.

A grievance procedure provides an open and fair way for employees to make known their concerns, problems or complaints. It enables such grievances to be resolved quickly before they fester and become major problems. An employee who fails to raise a grievance with their employer using the statutory procedure may be prevented from taking a claim relating to that grievance to employment tribunal.

Grievance procedure should allow grievances to be dealt with fairly, consistently, speedily and should include:

- how and with whom to raise the issue
- whom next to appeal to if not satisfied
- time limits for each stage
- the right to be accompanied by a fellow worker or trade union representative
- the statutory grievance procedure

7. Whistleblowing

Protection for employees, contractors or staff is relevant to allow any bullying or harassment to be reported without fear of victimisation or further harassment

Notes on Whistleblowing

Whistle-blowing, sometimes referred to as confidential reporting or public interest disclosure, provides a link between employment concerns, such as bullying, and the more general complaints procedures discussed below.

The principles of whistle-blowing should apply to Members, contractors and partners in any ongoing project, as well as employees. It is to employees, however, that the law in this area is aimed.

The Public Interest Disclosure Act 1998 (PIDA) encourages people to raise concerns about malpractice in the workplace and will help ensure that organisations respond by

- addressing the message rather than the messenger; and
- resisting the temptation to cover up serious malpractice.

Through protecting whistleblowers from dismissal and victimisation in the following circumstances, the Act promotes the public interest.

Malpractice

The Act applies to people at work raising genuine concerns about crime, civil offences (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and the cover up of any of these. It applies whether or not the information is confidential.

Individuals covered

In addition to the Clerk and other employees, it covers trainees, agency staff, contractors, homeworkers, etc. The usual employment law restrictions on minimum length of service and age do not apply. The Act does not presently cover the genuinely self-employed, volunteers, the intelligence services, or the army.

Legal Advice

The Act confirms that workers may safely seek legal advice on any concerns they have about malpractice. This includes seeking advice from Public Concern at Work, a charity established to help people with these issues and which is designated a legal advice centre by the Bar Council.

Internal disclosures

A disclosure in good faith to a manager or the employer will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the matter this same test applies to disclosures made to it.

Regulatory disclosures

The Act also protects disclosures made in good faith to prescribed bodies where the whistleblower reasonably believes that the information and any allegation in it are substantially true. In respect of Parish Councils the prescribed bodies would include the Health and Safety Executive, HM Revenues and Customs, the Audit Commission (or appointed external auditors) and the Standards Board for England.

Wider disclosures

Wider disclosures (e.g. to the police, the media, MPs, and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they meet one of the three preconditions.

Provided they are not made for personal gain, these preconditions are that the whistleblower:

- reasonably believed he or she would be victimised if he or she raised the matter internally or with a prescribed regulator;
- reasonably believed a cover-up was likely and there was no prescribed regulator; or
- had already raised the matter internally or with a prescribed regulator.

In deciding the reasonableness of the disclosure the employment tribunal will consider the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether it breached a duty of confidence the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the reasonableness of its response will be particularly relevant. Finally, if the concern has first been raised with the employer, it is relevant whether any whistle-blowing policy in the organisation was or should have been used.

Exceptionally serious matters

Where the concern is exceptionally serious, a disclosure will be protected if it meets the test for regulatory disclosures and is not made for personal gain. The disclosure must also be reasonable having particular regard to the identity of the person to whom it was made.

Full protection

Where the whistleblower is victimised in breach of the Act he or she can bring a claim to an employment tribunal for compensation. Awards will be uncapped and based on the losses suffered. Additionally where an employee is sacked, he or she may apply for an interim order to keep his job.

Gagging clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Further Advice

There is specific information about the Public Interest Disclosure Act from the following Organisations:

Public Concern at Work, a charity that provides free, confidential advice on what is protected by the Act and how best to raise a concern, on 0207 404 6609 or see www.pcaw.co.uk.

The website also includes a section entitled "*Practical hints for small organisations*".

The **Department for Business, Enterprise and Regulatory Reform** also has a guide to the Act. This is available via the website at www.berr.gov.uk.