

AGENDA Staffing Committee 7th November 2022 _____	2
AGENDA ITEM 08 - WILTSHIRE PENSION Q4__Employers_Newsletter_(4) _____	4
AGENDA ITEM 09 - Staff additional hours report up to October 2022 _____	10
AGENDA ITEM 10a - DBS Check policy _____	11
AGENDA ITEM 10a - Report on Staff DBS checks _____	13
AGENDA ITEM 10c - new NALC Dignity at Work Policy _____	14
AGENDA ITEM 10d - Habitual or Vexatious Complainants Policy _____	26
AGENDA ITEM 17a - Disciplinary Policy _____	31
AGENDA ITEM 17b - ACAS webinar on how to run an investigation and disciplinary _____	41



MELKSHAM WITHOUT PARISH COUNCIL

Clerk: Mrs Teresa Strange

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Tuesday 1st November 2022

To all members of the Council **Staffing Committee**: Councillors: Alan Baines, Stefano Patacchiola, David Pafford (Acting Chair of Council), Andy Russell (Acting Vice- Chair of Council) Robert Shea-Simonds, Shona Holt and Rob Hoyle.

You are summoned to attend the Staffing Committee Meeting which will be held on **Monday 7th November 2022 at 7.45pm (following the Planning Committee)** at Melksham Without Parish Council Offices (First Floor), Melksham Community Campus, Market Place, SN12 6ES to consider the agenda below.

TO ACCESS THE MEETING REMOTELY PLEASE FOLLOW THE ZOOM LINK BELOW. THE LINK WILL ALSO BE POSTED ON THE PARISH COUNCIL WEBSITE WHEN IT GOES LIVE SHORTLY BEFORE 7PM.

Click link here:

<https://us02web.zoom.us/j/2791815985?pwd=Y2x5T25DRlVWVU54UW1YWWE4NkNrZz09#success>

Or go to www.zoom.us or Phone 0131 4601196 and enter: Meeting ID: 279 181 5985
Passcode: 070920 Instructions on how to access zoom are on the parish council website www.melkshamwithout.co.uk If you have difficulties accessing the meeting please call (do not text) the out of hours mobile: 07341 474234

The recording will be available to view on YouTube the day following the meeting, search for Melksham Without Parish Council, until the minutes of that meeting are approved, which become the legal record of the meeting.

Yours sincerely

A handwritten signature in cursive script that reads "Strange".

Teresa Strange, Clerk

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AGENDA

1. **Welcome, Announcements and Housekeeping**
2. **To appoint Chairman & Vice Chair of Staffing & Resources Committee for 2022/23**
3. **To receive Apologies and approval of reasons given**
4. To receive **Declarations of Interest**
5. **To consider holding items in Closed Session (11,12, 13, 16, 17c, 17d) due to confidential nature** Under the Public Bodies (Admission to Meetings) Act 1960, the public and representatives of the press and broadcast media be excluded from the meeting during the consideration of the following items of business as publicity would be prejudicial to the public interest because of the confidential nature of the business to be transacted
6. **Public Participation**
7. To note latest situation with negotiations on NJC (National Joint Council for Local Government Services) new pay scales for 2022-2023. <https://www.slcc.co.uk/local-government-pay-claim-2022-23-pay-offer-accepted/> and impact on Budget 2022/23
8. To note latest newsletter from Wiltshire Pension Fund with Fund Update on current market conditions <https://employer.wiltshirepensionfund.org.uk/article/5715/Employer-Newsletters>
9. To note staff additional hours up to October 2022 and Actual vs Budget for staffing (by individual) for this financial year to date.
10. To review the following policies:
 - a) DBS Check Policy and note current DBS status of staff
 - b) New Communications Policy
 - c) New National Association of Local Councils (NALC) Dignity at work Policy
 - d) Habitual & Vexatious Complainants Policy
11. To note accident report and consider any actions
12. To receive feedback following staff appraisals and consider any actions arising
13. To receive feedback following Clerk's appraisal and consider any actions arising
14. To consider any requests for staff training and to note current training log
15. To consider any amendments to Job Descriptions
16. To consider pay scale increase for Allotment Warden following successful completion of RoSPA qualification.
17.
 - a) To note current Disciplinary Policy
 - b) To note ACAS webinar re Investigations and disciplinaries – how to manage and disclose information (information to follow from webinar 7th Nov)
 - c) To note current Disciplinary Investigation
 - d) To consider next steps

Copy to: All Councillors

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Dates for your diaries...

- **Triennial Valuation Results**

Results expected 17 Nov
Employer Forum 21 Nov
Employer Surgery 29 Nov

- **Employer Strategic Focus Group**

Tuesday 1 November 2pm

This is an informal way for you, our employers to engage with the Fund (via the officers and the employer representatives on the Pension Fund Committee) on strategic issues.

- **National Pension Tracing Day**

30th October

Visit nationalpensiontracingday.co.uk to find out what resources are available for your employees.

Pension Awareness Week (PAW) reschedule

31st October - 4th November

This is a great opportunity as an employer to highlight the LGPS as part of the great remuneration package you offer your employees.

Recruiting ? Offering a stable , secure pension scheme not impacted by investment market movements, and guaranteed by law can help attract high calibre candidates especially now where there is so much concern surrounding pensions.

Content for PAW will be shared in due course, keep your eye on your inbox!

Fund update on current market conditions

Following the Government's budget announcements on 23 September 2022, we have seen extreme volatility in financial markets, with the cost of government borrowing rising (and the value of government bonds, also called gilts, falling), strong reactions in UK stock markets, and sterling falling to record lows.

The International Monetary Fund has taken the unprecedented step of writing to the chancellor expressing concern, and the Bank of England has stepped in with temporary quantitative easing measures to stabilise the situation. There have also been news stories about pension funds being unable to sell their gilts in order to make payments.

We are providing an update to give assurance to all fund members of the financial stability of Wiltshire Pension Fund. We encourage all our employers to share this message and provide reassurance to their employees in the safety of their pensions.

The Wiltshire Pension Fund maintains holdings in ample cash and liquid investments and there will be no problems in paying pensions. The Fund does hold UK gilts, which represents c10% of the total fund value, and this forms just one part of a well-diversified investment portfolio. The fund does not use a liability driven investment strategy (LDI) which has been highlighted as a cause of problems for many UK pension funds.



Visit the [Investments section](#) of our website to read more about how we manage our investments.

In other news...

Our 2022 Responsible Investment Policy has been published!

We take responsible investment very seriously, and first developed a dedicated policy in 2021, which covers how we embed responsible investment issues across the whole investment process, from setting our strategy, to monitoring and engaging with our investments, through to how we communicate and share investment news with our stakeholders.



Full Article

[available in the news section of our website](#)

Triennial Valuation timeline



Visit our [website](#) for the latest update!

Administration Charges

for employers not on i-Connect

Following approval from committee in August , it is now mandatory for all employers to be onboarded to i-Connect.

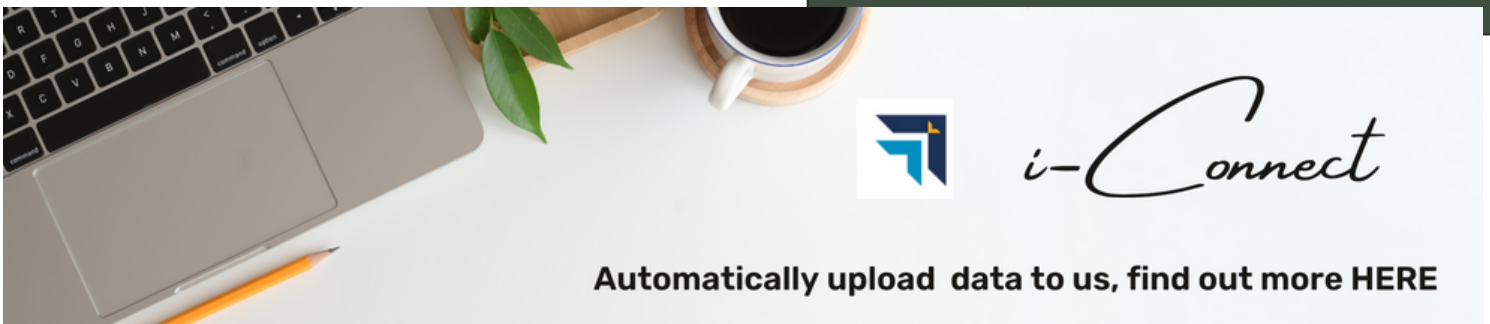
Since the introduction of i-Connect in March 2022 we have been helping our employers through the onboarding process. To date 73% of our employers onboarded equating to 38% of the Wiltshire Pension Fund membership.

What is changing?

Administration charges are being introduced due to the additional work it takes to process non i-Connect employers members pensions each month.

When are the charges being introduced?

Communication's will follow with further details and implementation dates once the charging schedule has been finalised. However for clarity these charges will apply to any work completed in the processing of non i-Connect employers submissions.



We are undertaking a review of all documentation with scheme employer's, and will be contacting you in due course with a view to complete any gaps/ updates where required.

Outsourced services

When a service i.e. catering/ cleaning is outsourced the company taking on the contract must become an Admitted Body within the fund to be able to continue offering the LGPS (Wiltshire Pension Fund) to your staff.

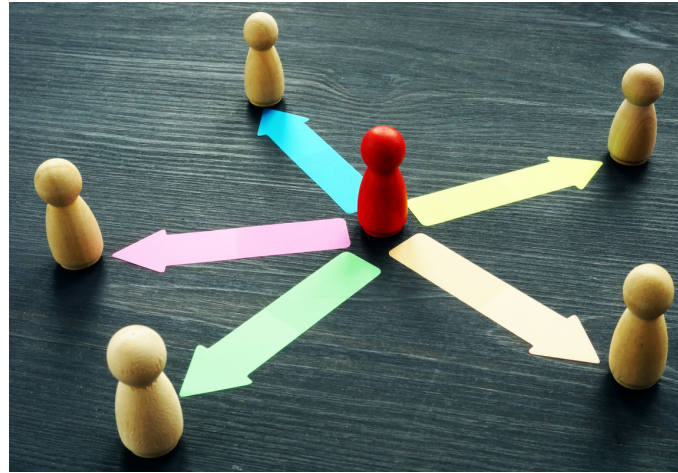
The Best Value Authorities Staff Transfers (Pensions) Direction 2007 covers the rights of the employee to retain access to the LGPS. The Wiltshire Pension Fund is an excellent but expensive pension fund especially for small employers.

Pension risks should be considered when the contracts are awarded.

Risks to consider;

- Contribution rates
- Strain costs
- Cessation

Find out more on our [dedicated outsourcing webpage](#)

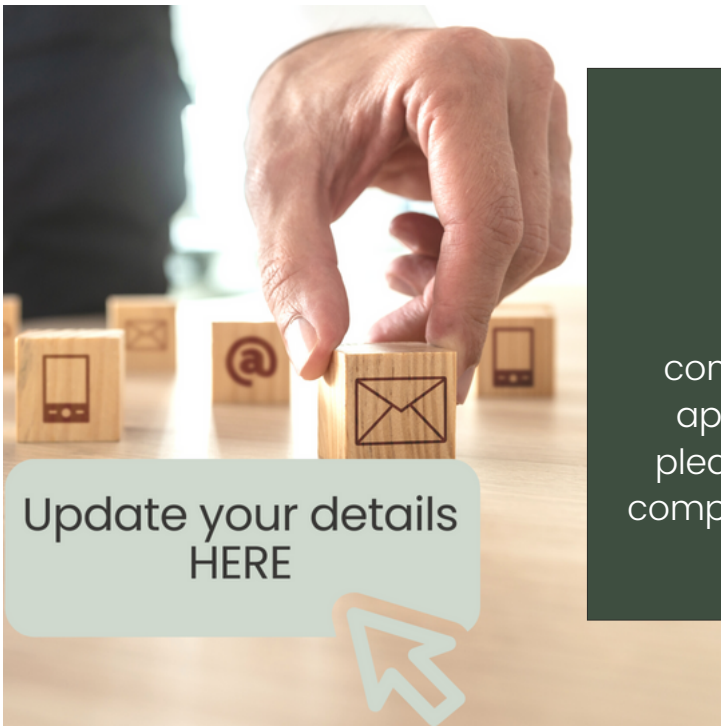


Thinking of outsourcing?



CONTACT
denise.robinson@wiltshire.gov.uk

to discuss the best way forward



Contact Details

To ensure we are communicating with the appropriate person(s) please take a moment to complete our contacts form.

Update your details
HERE



Wiltshire Pension Fund

We hope you found this useful!

Digital copies of our newsletters can be found on our [website](#)

Questions?

Please contact Denise.Robinson@wiltshire.gov.uk

Staff Additional Hours Report 2022/23
Staff Member

Month Paid	Teresa Strange	Marianne Rossi	Lorraine McRandle	Terry Cole	David Cole	Month Total	Cumulative Total
APRIL	14.00	8.50	7.25	0.00	0.00	29.75	29.75
Paid Hours	0.00	8.50	0.00	0.00	0.00	8.50	8.50
Taken in Lieu	14.00	0.00	7.25	0.00	0.00	21.25	21.25
MAY	17.50	1.50	24.25	0.00	0.00	43.25	73.00
Paid Hours	17.50	1.50	24.25	0.00	0.00	43.25	51.75
Taken in Lieu	0.00	0.00	0.00	0.00	0.00	0.00	21.25
JUNE	0.00	22.50	16.50	0.00	12.00	51.00	124.00
Paid Hours	0.00	22.50	16.50	0.00	12.00	51.00	102.75
Taken in Lieu	0.00	0.00	0.00	0.00	0.00	0.00	21.25
JULY	59.25	8.00	12.50	0.00	3.25	83.00	207.00
Paid Hours	8.75	7.00	12.50	0.00	3.25	31.50	134.25
Taken in Lieu	50.50	1.00	0.00			51.50	72.75
AUGUST	44.25	0.00	16.25	0.00	0.50	61.00	268.00
Paid Hours	13.25	0.00	16.25	0.00	0.50	30.00	164.25
Taken in Lieu	31.00	0.00	0.00	0.00	0.00	31.00	103.75
SEPTEMBER	27.00	6.00	4.00	0.00	7.00	44.00	312.00
Paid Hours	21.00	6.00	4.00	0.00	7.00	38.00	202.25
Taken in Lieu	6.00	0.00	0.00	0.00	0.00	6.00	109.75
OCTOBER	24.00	8.75	22.75	0.00	0.00	55.50	367.50
Paid Hours	10.75	8.75	21.50	0.00	0.00	41.00	243.25
Taken in Lieu	13.25	0.00	1.25	0.00	0.00	14.50	124.25
NOVEMBER	0.00	0.00	0.00	0.00	0.00	0.00	367.50
Paid Hours						0.00	243.25
Taken in Lieu						0.00	124.25
DECEMBER	0.00	0.00	0.00	0.00	0.00	0.00	367.50
Paid Hours						0.00	243.25
Taken in Lieu						0.00	124.25
JANUARY	0.00	0.00	0.00	0.00	0.00	0.00	367.50
Paid Hours						0.00	243.25
Taken in Lieu						0.00	124.25
FEBRUARY	0.00	0.00	0.00	0.00	0.00	0.00	367.50
Paid Hours						0.00	243.25
Taken in Lieu						0.00	124.25
MARCH	0.00	0.00	0.00	0.00	0.00	0.00	367.50
Paid Hours						0.00	243.25
Taken in Lieu						0.00	124.25
Staff Member Cumulative Total Hours	186.00	55.25	103.50	0.00	22.75		
Staff Member Cumulative Hours Paid	71.25	54.25	95.00	0.00	22.75		
Staff Member Cumulative Hours Taken in Lieu	114.75	1.00	8.50	0.00	0.00		

Note: David Cole attended the two day ROSPA Course

Note: David Cole covered for Caretaker

Note David covered for the Caretaker plus attended the Berryfield Village Hall handover



MELKSHAM WITHOUT PARISH COUNCIL

DBS (DISCLOSURE BARRING SERVICE) CHECK & RECRUITMENT OF EX-OFFENDERS POLICY

POLICY

The code of practice published under section 122 of the Police Act 1997 advises that it is a requirement that all registered bodies must treat DBS applicants who have a criminal record fairly and not discriminate automatically because of a conviction or other information revealed. Melksham Without Parish Council requires that a DBS check is carried out as part of the recruitment process for all existing positions that are in direct contact with vulnerable people and that they are renewed every three years.

The following procedure should be read in conjunction with the Government's Code of Practice available on the GOV.UK website.

PROCEDURE

1. As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), Melksham Without Parish Council complies fully with the code of practice and undertakes to treat all applicants for positions fairly.
2. Melksham Without Parish Council undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.
3. Melksham Without Parish Council can only ask an individual to provide details of convictions and cautions that Melksham Without Parish Council are legally entitled to know about. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended).
4. Melksham Without Parish Council can only ask an individual about convictions and cautions that are not protected.
5. Melksham Without Parish Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.

6. Melksham Without Parish Council has a written policy on the recruitment of ex-offenders, which is made available to all DBS applicants at the start of the recruitment process.
7. Melksham Without Parish Council actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records.
8. Melksham Without Parish Council select all candidates for interview based on their skills, qualifications and experience.
9. An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.
10. Melksham Without Parish Council ensures that all those in Melksham Without parish Council who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences.
11. Melksham Without Parish Council also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
12. At interview, or in a separate discussion, Melksham Without Parish Council ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
13. Melksham Without Parish Council makes every subject of a criminal record check submitted to DBS aware of the existence of the code of practice and makes a copy available on request.
14. Melksham Without Parish Council undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

From Government Recommended Policy available at www.gov.uk.

Recommended by Staffing Committee 4th February 2019 and adopted by Full Council 11th February 2019.

Report on Staff DBS Checks

Employee	Date of last DBS Check
Teresa Strange	22/11/2021
Lorraine McRandle	12/03/2020
Marianne Rossi	Never been done
Terry Cole	23/10/2019- Need to renew
David Cole	13/04/2021

DIGNITY AT WORK POLICY

[Council] believes that civility and respect are important in the working environment, and expect all councillors, officers and the public to be polite and courteous when working for, and with the council.

Purpose

[Council] is committed to creating a working environment where all council employees, councillors, contractors and others who come into contact with us in the course of our work, are treated with dignity, respect and courtesy. We aim to create a workplace where there is zero tolerance for harassment and bullying

[Optional – for Councils who have committed to the pledge] In support of this objective, **[Council]** has signed up to the Civility Pledge, as a commitment to civility and respect in our work, and politeness and courtesy in behaviour, speech, and in the written word. Further information about the Civility and Respect Pledge is available [NALC](#) & [SLCC](#)

We recognise that there is a continuum where unaddressed issues have the potential to escalate and become larger, more complex issues and this policy sets out how concerns will be managed however the emphasis of this policy is on resolution and mediation where appropriate, rather than an adversarial process.

This document:

- explains how we will respond to complaints of bullying or harassment;
- ensures that we respond sensitively and promptly; and,
- supports our employees in ensuring their behaviour does not amount to bullying and/or harassment by giving examples.

Scope

This policy covers bullying and harassment of and by **clerks/chief officers** and all employees engaged to work at **[Council]**. Should agency staff, or contractors have a complaint connected to their engagement with **[Council]** this should be raised to their nominated contact, manager, or the Chair of the Council, in the first instance. Should the complaint be about the chair of the council the complaint should be raised to the **deputy chair / council's personnel / staffing committee**.

Agency staff, or contractors are equally expected to treat council colleagues, and other representatives and stakeholders with dignity and respect, and the council may terminate the contract, without notice, where there are suspicions of harassment or bullying.

Complaints about other employment matters will be managed under the council's grievance policy.

It is noted that the management of a situation may differ depending on who the allegations relate to (e.g. employees, contractor, councillor), however, the council will take appropriate action if any of its employees are bullied or harassed by employees, councillors, members of the public, suppliers or contractors.

The position on bullying and harassment

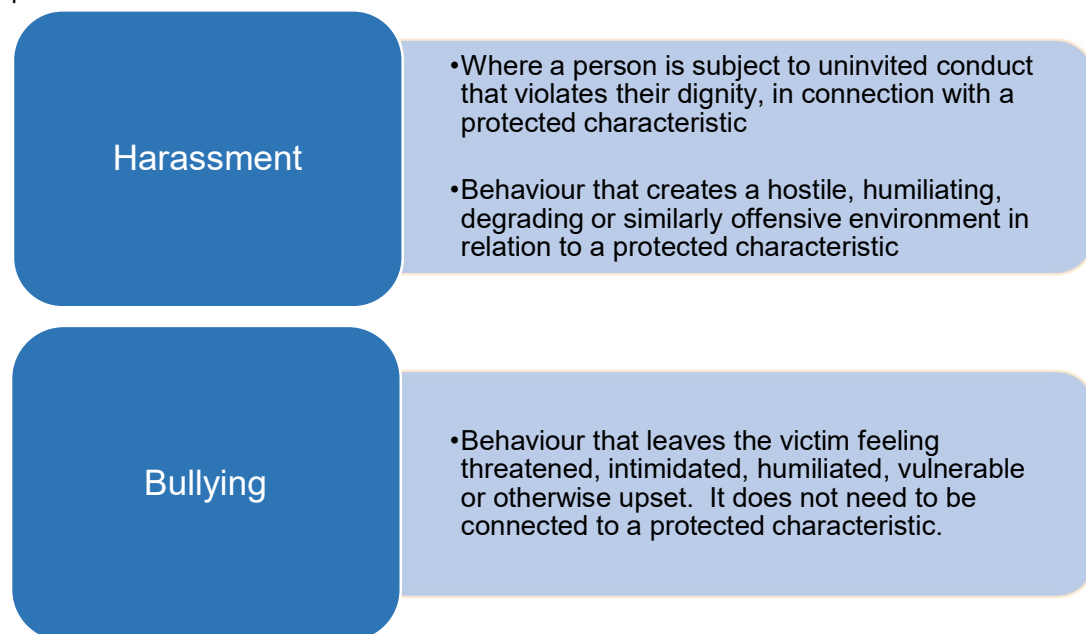
All staff and council representatives are entitled to dignity, respect and courtesy within the workplace and to not experience any form of discrimination. [Council] will not tolerate bullying or harassment in our workplace or at work-related events outside of the workplace, whether the conduct is a one-off act or repeated course of conduct, and whether harm is intended or not. Neither will we tolerate retaliation against, or victimisation of, any person involved in bringing a complaint of harassment or bullying. You should also be aware that, if you have bullied or harassed someone (e.g. physical violence, harassment), in some circumstances the treatment may amount to a crime punishable by a fine or imprisonment.

We expect all representatives of the council to treat each other with respect and uphold the values of the code of conduct, [civility and respect pledge], equality opportunities policy, and all other policies and procedures set by the Council.

We expect you to demonstrate respect by listening and paying attention to others, having consideration for other people's feelings, following protocols and rules, showing appreciation and thanks, and being kind.

Allegations of bullying and harassment will be treated seriously. Investigations will be carried out promptly, sensitively and, as far as possible, confidentially. See the grievance policy for further details regarding the process. Employees and others who make allegations of bullying or harassment in good faith will not be treated less favourably as a result.

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. While we will assume that all complaints of bullying and harassment are made in good faith, in the event that allegations are found to be malicious or vexatious the person raising the complaint may be subject to action under the council's disciplinary procedure.



What Type of Treatment amounts to Bullying or Harassment?

'Bullying' or 'harassment' are phrases that apply to treatment from one person (or a group of people) to another that is unwanted and that has the effect of violating that person's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for that person.

Examples of bullying and harassment include:

- Physical conduct ranging from unwelcome touching to serious assault
- Unwelcome sexual advances
- The offer of rewards for going along with sexual advances e.g. promotion, access to training
- Threats for rejecting sexual advances
- Demeaning comments about a person's appearance
- Verbal abuse or offensive comments, including jokes or pranks related to age, disability, gender re-assignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief, sex or sexual orientation
- Unwanted nicknames, especially related to a person's age, disability, gender re-assignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief, sex or sexual orientation
- Spreading malicious rumours or insulting someone
- Lewd or suggestive comments or gestures
- Deliberate exclusion from conversations, work activities or social 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
- Display of pictures or objects with sexual or racial overtones, even if not directed at any particular person
- Isolation or non-cooperation at work
- Subjecting a person to humiliation or ridicule, belittling their efforts, whether directly and / or in front of others
- The use of obscene gestures
- Abusing a position of power

Bullying and harassment can occur through verbal and face to face interactions, but can also take place through sharing inappropriate or offensive content in writing or via email and other electronic communications and social media.

It is important to recognise that conduct which one person may find acceptable, another may find totally unacceptable and behaviour could be harassment when the person had no intention to offend. We all have the right to determine what offends us. Some behaviour will be clear to any reasonable person that it is likely to offend – for example sexual touching. Other examples may be less clear, however, you should be aware that harassment will occur if behaviour continues after the recipient has advised you that the behaviour is unacceptable to them.

Harassment can also occur where the unwanted behaviour relates to a perceived characteristic (such as offensive jokes or comments based on the assumption someone is gay, even if they are not) or due

to their association with someone else (such as harassment related to their partner having a disability for example). **See the council's equality and diversity Policy.**

All employees must, therefore, treat their colleagues with respect and appropriate sensitivity and should feel able to challenge behaviour that they find offensive even if it is not directed at them.

It is important to recognise that bullying does not include appropriate criticism of an employee's behaviour or effective, robust performance management. Constructive and fair feedback about your behaviour or performance from your manager or colleagues/Councillors is not bullying. It is part of normal employment and management routines, and should not be interpreted as anything different.

Victimisation

Victimisation is subjecting a person to a detriment because they have, in good faith, complained (whether formally or otherwise) that someone has been bullying or harassing them or someone else, or supported someone to make a complaint or given evidence in relation to a complaint. This would include isolating someone because they have made a complaint or giving them a heavier or more difficult workload.

Provided that you act in good faith, i.e. you genuinely believe that what you are saying is true, you have a right not to be victimised for making a complaint or doing anything in relation to a complaint of bullying or harassment and the council will take appropriate action to deal with any alleged victimisation, which may include disciplinary action against anyone found to have victimised you.

Making a complaint that you know to be untrue, or giving evidence that you know to be untrue, may lead to disciplinary action being taken against you.

Reporting Concerns

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 your nominated manager in the first instance or, with the clerk/or a councillor. Any such report will be taken seriously, and we will 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/chief officer 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 the Councillors Code of Conduct must be investigated by the Monitoring Officer.

The council will consider reasonable measures to protect your health and safety. Such measures may include a temporary change in duties or change of work location, not attending meetings with the person about whom the complaint has been made etc.

What you should do if you witness an incident you believe to harassment or bullying: If you witness such behaviour you should report the incident in confidence to the clerk/chief officer 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 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 the council's policy and must stop. Alternatively, you may wish to ask the clerk/chief officer, your nominated manager or a colleague 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 nominated manager, you should raise the issue with the chair of the council. (If your concern relates to the chair, you should raise it with the chair of the personnel/staffing committee). The chair (or another appropriate person) will discuss with you the option of trying to resolve the situation informally by telling the alleged perpetrator, without prejudicing the matter, that:

- there has been a complaint that their behaviour is having an adverse effect on a member of the council staff
- such behaviour is contrary to our policy
- for employees, the continuation of such behaviour could amount to a serious disciplinary offence

It may be possible for this conversation to take place with the alleged perpetrator without revealing your name, if this is what you want. The person dealing with it will also stress that the conversation is confidential.

In certain circumstances we may be able to involve a neutral third party (a mediator) to facilitate a resolution of the problem. The chair (or another appropriate person) 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 extremely serious allegation or in cases where a problem has happened before) we 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 bullying and harassment through the council's grievance procedure. You should raise your complaint to the clerk/chief officer 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/chief officer or the chair of the council will appoint someone to investigate your complaint in line with the grievance policy. 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.

The alleged perpetrator(s) would normally need to be told your name and the details of your grievance in order 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 make temporary adjustments to working arrangements whilst the matter is being investigated.

Where your complaint relates to potential breaches of the Councillors Code of Conduct, these will need to be investigated by the Monitoring Officer. The council will consider any adjustments to support you in your work and to manage the relationship with the councillor the allegations relate to, while the investigation proceeds.

Investigations will be carried out promptly (without unreasonable delay), sensitively and, as far as possible, confidentially. When carrying out any investigations, we will ensure that individuals' personal data is handled in accordance with the data protection policy.

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 understand better your complaint (see the grievance policy for further information, and details of your right to be accompanied).

After the investigation, a panel will meet with you to consider the complaint and the findings of the investigation in accordance with the grievance procedure. At the meeting you may be accompanied by a fellow worker or a trade union official.

Following the conclusion of the hearing 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.

The use of the Disciplinary Procedure

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. We will keep you informed of the outcome.

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

GUIDANCE FOR USING THE DIGNITY AT WORK POLICY

This is an example of an employment policy designed for a 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.

This guidance is provided to support understanding of the policy, and its application, as well as where local adaptations may be required. The guidance is not part of the policy and should be removed from the policy adopted and shared with council employees.

The Dignity at Work Policy will replace a previous 'Bullying and Harassment' Policy, to create a policy that is focussed on encompassing behaviours beyond simply bullying and harassment, and zero tolerance with the aim of dealing with concerns before they escalate. It is important that any commitment made in the policy is applied in practice.

Wording has been suggested to demonstrate a council's commitment to promoting dignity and respect where they have signed up to the NALC, SLCC and OVW Civility and Respect Pledge. Council's that have not signed up to this are requested to consider making this pledge which is based on basic behaviours and expectations of all council representatives to create workplaces that allow people to maintain their dignity at all times. If your council has not agreed to the pledge this wording should be removed.

The policy is drafted with consideration of employment language and terminology that is reflective of a modern working environment, setting a tone that is engaging, collaborative and inclusive. A council may want to update references where relevant to reflect local terminology and structure, however should be considerate of equality, diversity and inclusion.

The examples of bullying and harassment are just that – examples. This should not be considered an exhaustive list.

Notes:

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. 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.

Examples of harassment related to a protected characteristic could include;

- Making assumptions about someone’s ability due to their **age**, or denying development opportunities to someone based on their age. This could also include assumptions about their lifestyle or making inappropriate jokes related to age.
- Making fun or mimicking impairments related to a health condition, or using inappropriate language about disabilities. Constantly selecting social activities that make it impossible for a colleague with a **disability** to participate in.
- Refusing to treat a person as their new gender, or disclosing information about their gender identity could be harassment on the grounds of **gender reassignment**.
- **Pregnancy/Maternity** harassment could include refusing opportunities due to pregnancy or maternity leave, or inappropriate touching and invasion of personal space such as unwanted touching of a pregnant persons stomach.
- Harassment based on **race** could include derogatory nicknames, or stereotyping based on ethnicity. It could include racist comments or jokes, or assumptions about someone’s lifestyle based on their ethnicity.
- **Gender** harassment could include not considering people for a job based on gender stereotyping roles, or implementing practices that disadvantage one gender over another. Rude, explicit jokes, even if not directed at an individual, or comments on individuals dress or appearance.
- Regularly arranging team meals over periods of fasting or religious occasions or failing to adjust a dress code to accommodate religious dress could be examples of harassment based on **religion/belief**.
- Excluding same sex partners from social events could be both **sexual orientation** and **marriage/civil partnership** discrimination, as could not offering the same work-related benefits.

A person does not need to be employed or have 2 years qualifying service 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, or treated unreasonably because of a health condition can make a discrimination claim.
- 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

Legal risks

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.

Culture and behaviour

We work in eclectic communities and working environments, and a positive culture within the council enables employees with different backgrounds and beliefs to share ideas and shape how the council achieves its objectives for their community.

It is important to recognise that different individuals may find different behaviours bullying or harassing so while there is not always intent to offend or cause harm, that does not mean that the effect of the behaviour has not caused harm or offence.

It can take people a period of time to decide to raise their concerns, as they worry about consequences (perhaps from peers by complaining about a colleague who is popular, or they fear victimisation from the perpetrator or others). The council should consider whether there are opportunities (such as 121s to offer opportunity to reflect on relationships/morale) to identify issues earlier and address negative behaviours. Individuals can often mention concerns they are experiencing but not want to take it further. The council should remind the complainant that it has a zero tolerance to bullying and harassment and remind them of the policy in place to address concerns. If the allegations mentioned are significant, the council may want to suggest that it will need to investigate further, even if a 'grievance' is not raised, so as to ensure that any concerns and risks are managed, and the council is meeting its responsibilities and duty of care as an employer.

Whilst both staff and councillors jointly determine the working culture, 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.

Scope

All council representatives are expected to uphold the values of the Dignity at Work Policy, however this policy sets out how allegations from employees will be managed. As indicated in the policy, concerns from a contractor, agency worker etc. should be raised to the identified person, and an appropriate approach will be considered based on the situation and relationship of the complainant with the council.

Likewise, concerns raised about the behaviour of a contractor or agency worker would not generally be managed via the full process (such as the disciplinary process) but appropriate action would be considered based on the situation. To treat people (such as contractors, or a casual worker) engaged

by the council the same as an employee could blur the status of the employment relationship, so consider seeking professional advice if needed.

Managers

Recognising that councils are of varying sizes, where the term manager/nominated manager is used it is recognised this could be the clerk/chief officer, another employee of the council, or a councillor depending on the situation. It is good practice to have a clearly identified person who is the responsible 'line manager' or equivalent contact for an employee so that there is clarity on how the employee should report concerns to, who they notify if they are sick or to request leave etc. More often for council employees this may be the clerk/chief officer, and for the clerk/chief officer this could be the chair/deputy Chair, or possibly chair of a staffing/personnel committee.

Bullying and harassment & performance management

The policy sets out that bullying and harassment does not include appropriate criticism of an employee's behaviour or effective, robust performance management. It is not uncommon for an employee, when receiving critical feedback, to claim that this is bullying and/or harassing. It is the role of the nominated manager to provide effective and constructive feedback to encourage performance at the required standard.

Even when the feedback is not positive it should be fair, communicated in a professional and reasonable manner and shared with the objective of aiding understanding and achieving an improvement to overcome the shortfalls. There is no absolute definition of when the feedback may not be appropriate. Often it will be for the person/panel hearing the dignity at work complaint/grievance to determine whether the performance management has upheld the standards expected in terms of respect and civility and any feedback has been shared in a fair and professional way.

Responsibilities

All staff and representatives of the council are responsible for their own behaviour in the workplace and for taking steps to revise unacceptable behaviour and appropriately challenge that of others.

Leaders – councillors, clerks, chief officers, managers - are responsible for ensuring that these standards of treating people with civility, respect and courtesy are upheld, both through their own example, and by communicating and promoting these expectations to all employees. They are also responsible for ensuring that concerns raised are treated seriously and addressed in line with this policy in a timely manner.

During the investigation

Employers have a 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. This could be a councillor or nominated manager who is not involved in the investigation or allegations and can be a point of check in as raising, or being subject to allegations can be stressful.

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 is important to consider their wellbeing and mental health.

Ensure that you communicate regularly with both parties.

The investigation and any subsequent hearing should be completed in accordance with the grievance policy which sets out a process for dealing with concerns. You should ensure that the grievance policy adopted adheres to any local policies and procedures, with consideration of any timescales and escalation routes in your locally adopted policy.

Confidentiality

It may be possible for concerns to be raised with the perpetrator without disclosing the name of the complainant however in a small council it is likely that it will be clear that the accused will know where the accusation has come from. The council representative (clerk/chief officer/councillor) speaking to the alleged perpetrator must be clear that the discussion is confidential and the individual would be at risk of formal disciplinary action if there is any sort of victimisation or retaliation for the individual raising their concern.

During any formal investigation it may be necessary to disclose the nature of the allegations and where they came from to ensure a fair and balanced investigation and process. This should be discussed with the person raising the concerns to understand any issues and how they may be mitigated. In some situations it may be appropriate to provide anonymised witness statements however this would be a last resort, and could compromise the fairness of the process. Where there is a genuine fear of consequences and this may need to be considered, it is recommended that professional advice is sought. For the same reason it can be difficult for a council to consider an anonymous complaint, however if the concerns are significant and compromise the council in their duty of care to employees, then consideration of how the deal with the matter may be required.

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, cancelling a planned training event, or giving them a heavier or more difficult workload. Victimisation can lead to a claim to an employment tribunal.

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 be gross misconduct.

Complaints against Councillors

Following the Ledbury case, the law is clear that any formal complaint about a councillor regarding a breach of the code of conduct must be referred to the Monitoring Officer for investigation (either by the complainant, or the Council with agreement of the complainant). During the investigation, it is critical to ensure that where an employee of the council has made the complaint, that the council

agrees reasonable measures with the employee 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 about whom the complaint has been made etc.

Careful consideration is required where a grievance is raised against the council as a whole due to lack of support related to councillor behaviours. The specific allegations will need to be considered to determine whether the allegations can be addressed by the council, or require exploration of the councillors behaviour in order to respond, in which case the Monitoring Officer may be required to investigate the alleged behaviours of a/any councillors where this may relate to the code of conduct. It is a matter of fact whether the complaint is against the council and can therefore be dealt with by the council's grievance procedure or against a councillor and can only be dealt with by the Monitoring Officer.



MELKSHAM WITHOUT PARISH

HABITUAL OR VEXATIOUS COMPLAINANTS POLICY

1. Background

- 1.1 This document sets out guidance and procedures to help deal with people who repeatedly complain to the council or who complain in an unreasonable way.
- 1.2 There are times when nothing further can be done to solve a real or perceived problem and continual contact with the person complaining is time consuming and costly for the council.
- 1.3 This document explains how to decide if a complaint should be classed as habitual or unreasonable. It then gives advice about how the complaint should be recorded. Finally, options are listed to help process such complaints or cease contact with particular complainants.

2. Introduction

- 2.1 This policy identifies situations where a complainant or complainants, might be considered to be 'habitual or vexatious' and ways of responding to these situations.
- 2.2 In this policy the term habitual means 'done repeatedly or as a habit'. The term vexatious means 'irritating, annoying or causing distress'. This policy is intended to assist in identifying and dealing with persons who seek to be disruptive to the Council through pursuing an unreasonable course of conduct.
- 2.3 It is recognised that complainants can use repeated FOI or Subject Access Requests as a means of perpetuating a complaint which has been determined and therefore the term complaint in this policy includes requests made under the Freedom of Information Act 2000 and the Data Protection Act 1998 as well as those made under the Council's complaints procedure.
- 2.4 Habitual or vexatious complainants can be a problem for Council staff. The difficulty in handling such complainants is that they are time consuming and wasteful of resources in terms of Officer time and displace scarce human resources that could otherwise be spent on other Council priorities. Whilst the Council endeavours to respond with patience and sympathy to the needs of all complainants there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

3. Habitual or Vexatious Complainants

3.1 For the purpose of this policy the following definition of habitual or vexatious complainants will be used:

The repeated and/or obsessive pursuit of:

- (i) unreasonable complaints and/or unrealistic outcomes; and/or
- (ii) reasonable complaints in an unreasonable manner.

3.2 Where complaints continue and are considered to be habitual or vexatious in accordance with the criteria set out in Schedule A, the Clerk or Chairman will inform the individual informally that his/her behaviour is considered by the Council to be unreasonable or unacceptable, and request a changed approach.

This is stage 1.

Stage 2

After taking into account the considerations set out in Schedule B and if there is no improvement in behaviour the Council will consider the matter, and, if considered necessary, will inform the complainant in writing that his/her behaviour falls under the terms of the habitual and vexatious complainants policy.

A copy of the Policy will be sent to the individual with a letter giving details of any restrictions which will apply. Schedule C details the options available for dealing with such complainants.

The letter should also state the length of time the restrictions are to apply and that any **legitimate** new complaint made in an acceptable manner will always be considered.

Once a complainant has been determined to be habitual or vexatious, their status will be kept under review for one year. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

Stage 3

Where there is dispute about action taken or not taken by the Council the complainant may refer the matter to the Local Government Ombudsman.

Habitual & Vexatious Complainants Policy

Schedule A - Criteria for Determining Habitual or Vexatious Complainants

Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet any of the following criteria:

Where complainants:

1. Persist in pursuing a complaint where the Council's complaints process has been fully and properly implemented and exhausted.
2. Persistently change the substance of a complaint or continually raise new issues or seek to prolong contact by continually raising further concerns or questions whilst the complaint is being addressed. Care must be taken, however, not to disregard new issues which are significantly different from the original complaint as they need to be addressed separately.
3. Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
4. Repeatedly do not clearly identify the precise issues which they wish to be investigated, despite the reasonable efforts of staff to help them specify their concerns, and/or where the concerns identified are not within the remit of the Council to investigate.
5. Regularly focus on matters which are not sufficiently serious to an extent which is out of proportion to their significance and continue to focus on these points. It is recognised that determining what is 'not sufficiently serious' can be subjective and careful judgement will be used in applying this criterion.
6. Have threatened verbally, or used physical violence towards employees at any time. This will, in itself, cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, thereafter, only be continued through written communication. A complainant who threatens either verbally or in writing or uses actual physical violence towards an employee will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.

It should also be noted that Melksham Without Parish Council in consultation with the affected individuals will refer any actual or threatened verbal or physical abuse to Wiltshire Police for investigation.

7. Have, in the course of addressing a registered complaint, had an excessive number of contacts with the Council – placing unreasonable demands on employees. A contact may be in person, by telephone, letter, email or fax or any other means. Excessive contact will be determined taking into account the specific circumstances of each individual case.

8. Have harassed or been verbally abusive towards employees dealing with the complaint. Employees recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health issue and there is a need to be sensitive in circumstances of that kind.

9. Are known to have recorded meetings or face-to-face/telephone conversations without the prior knowledge and consent of other parties involved.

10. Make unreasonable demands on the Council and fail to accept that these may be unreasonable, for example, insist on responses to complaints or enquiries being provided more urgently than is reasonable or within the Council's complaints procedure or normal recognised practice.

11. Make unreasonable complaints which impose a significant burden on the resources of the Council and where the complaint:

- clearly does not have any serious purpose or value; or
- is designed to cause disruption or annoyance; or
- has the effect of harassing the Council; or
- can otherwise fairly be characterised as obsessive or manifestly unreasonable.

12. Make repetitive complaints and allegations which ignore the replies which have been supplied in previous correspondence.

Schedule B - Considerations prior to taking action under the policy

Different considerations will apply depending on whether the investigation of the complaint is ongoing or whether it has been concluded. To some extent the latter is easier to deal with. It is in effect the complainant simply refusing to take no for an answer, and the Council has the option of ending all communication with the complainant, and where appropriate referring the complainant to the Ombudsman. However, where the complaint is ongoing there needs to be some continuing contact with the complainant.

The decision to designate someone as a habitual and vexatious complainant is onerous and could have serious consequences for the individual. Before deciding whether the policy should be applied Councillors should be satisfied that:

- the complaint is being or has been investigated properly;
- any decision reached on it is the right one;
- communications with the complainant have been adequate; and
- the complainant is not now providing any significant new information that might affect the Council's view on the complaint;

- or that the way in which the complainant has acted is unreasonable.

Schedule C - Options for Dealing with Habitual or Vexatious Complainants

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint process is ongoing or completed.

1. A letter to the complainant setting out responsibilities for the parties involved if the Council is to continue processing the complaint. If terms are contravened, consideration will then be given to implementing one or more actions as indicated below.
2. Decline contact with the complainant, either in person, by telephone, by fax, by letter, by email or any combination of these, provided that one form of contact is maintained. This may also mean that only one named person will be nominated to maintain contact (and a named deputy in their absence). The complainant will be notified of these persons.
3. Notify the complainant, in writing, that the Council has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as a habitual or vexatious complainant and as such the Council does not intend to engage in further correspondence dealing with the complaint.
4. Temporarily suspend all contact with the complainant, in connection with the issues relating to the complaint being considered habitual or vexatious, while seeking advice or guidance from its legal advisers or other relevant agencies. This temporary suspension of contact may include the blocking of e-mails from the complainant to those who may have been subjected to harassment.

Staffing & Resources Committee 30th January 2017 Recommendation Min. 346/16

Approved at Full Council 6th March 2017 Min 386/16

Recommended for Re-adoption by the Staffing Committee on 16 March 2020 (Min 489c/19)



MELKSHAM WITHOUT PARISH COUNCIL

Disciplinary Policy

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
- The Chair of the Council needs to remain independent should the need for staff disciplinarys arise and there is the possibility that an appeal hearing will be required. Therefore, should any disciplinary matter be discussed then the Chair of the Council will leave the meeting and not be party to the discussion. The Chair of the Council will also not be copied in on any emails, correspondence or documentation relating to disciplinary issues in order that independence is maintained. *(included from the Council's previous Discipline Policy)*

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 Council's staffing 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 staffing 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 staffing 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 staffing 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 staffing 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 staffing committee which will decide whether further action will 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 staffing committee decides that there is a case to answer, it will appoint a staffing sub-committee of three councillors, to formally hear the allegations. The staffing sub-committee will appoint a Chairman from one of its members. The Investigator shall not sit on the sub-committee.
- 23 No councillor with direct involvement in the matter shall be appointed to the sub-committee. The employee will be invited, in writing, to attend a disciplinary meeting. The sub-committee'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 sub-committee 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 sub-committee 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 sub-committee 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 sub-committee'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 sub-committee.

Disciplinary action

- 26 If the sub-committee 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 sub-committee 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 sub-committee'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 staffing committee who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the staffing committee 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 staff 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 staffing 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.

Recommended for approval by the Staffing Committee on 16 March 2020 (Min 489c/19. (This Policy is taken from a Nalc Disciplinary Policy)

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Teresa Strange

From: Teresa Strange
Sent: 24 October 2022 11:19
To: Alan Baines; Cllr Shona Holt
Cc: David Pafford
Subject: FW: Investigations and disciplinaries - free to attend webinars

Dear Alan and Shona

There is a free webinar being run by ACAS on how to run an investigation etc, that might be useful?

Kind regards, Teresa

From: ACAS <e-connect@acas.org.uk>
Sent: 24 October 2022 11:09
To: Teresa Strange <clerk@melkshamwithout.co.uk>
Subject: Investigations and disciplinaries - free to attend webinars

No images? [Click here](#)

acas working
for everyone

National e-connect newsletter
Employment relations update



Hello

Register for our free upcoming webinars on investigations and disciplinaries. We encourage you to register for these events early and to share details with anyone else in your organisation who may benefit from attending.

You will have the opportunity to ask questions of Acas presenters during the sessions.

Investigations and disciplinaries - how to manage and disclose information

This webinar is designed for small and medium businesses and sets out to answer common questions that we receive. This session will cover: information employers should supply to someone being investigated, retaining records, witness anonymity, disciplinary meeting letters and the role of the companion. Participants will get the opportunity to ask questions during the event.

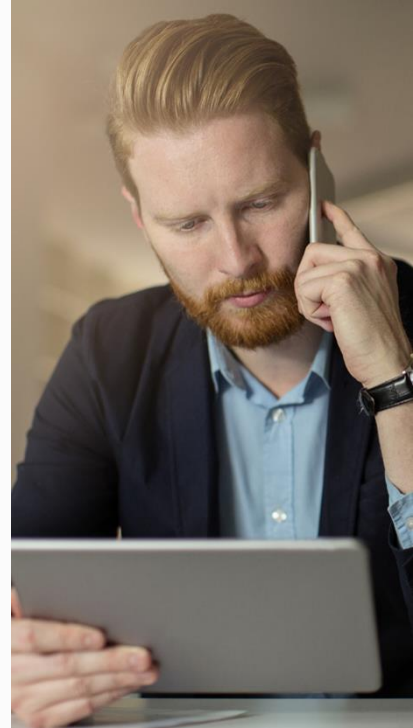
Register your place:

[Thursday 3 November 11am to 11:30am](#)

[Monday 7 November 2pm to 2:30pm](#)

[Wednesday 9 November 11am to 11:30am](#)

[Wednesday 30 November 2pm to 2:30pm](#)



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